

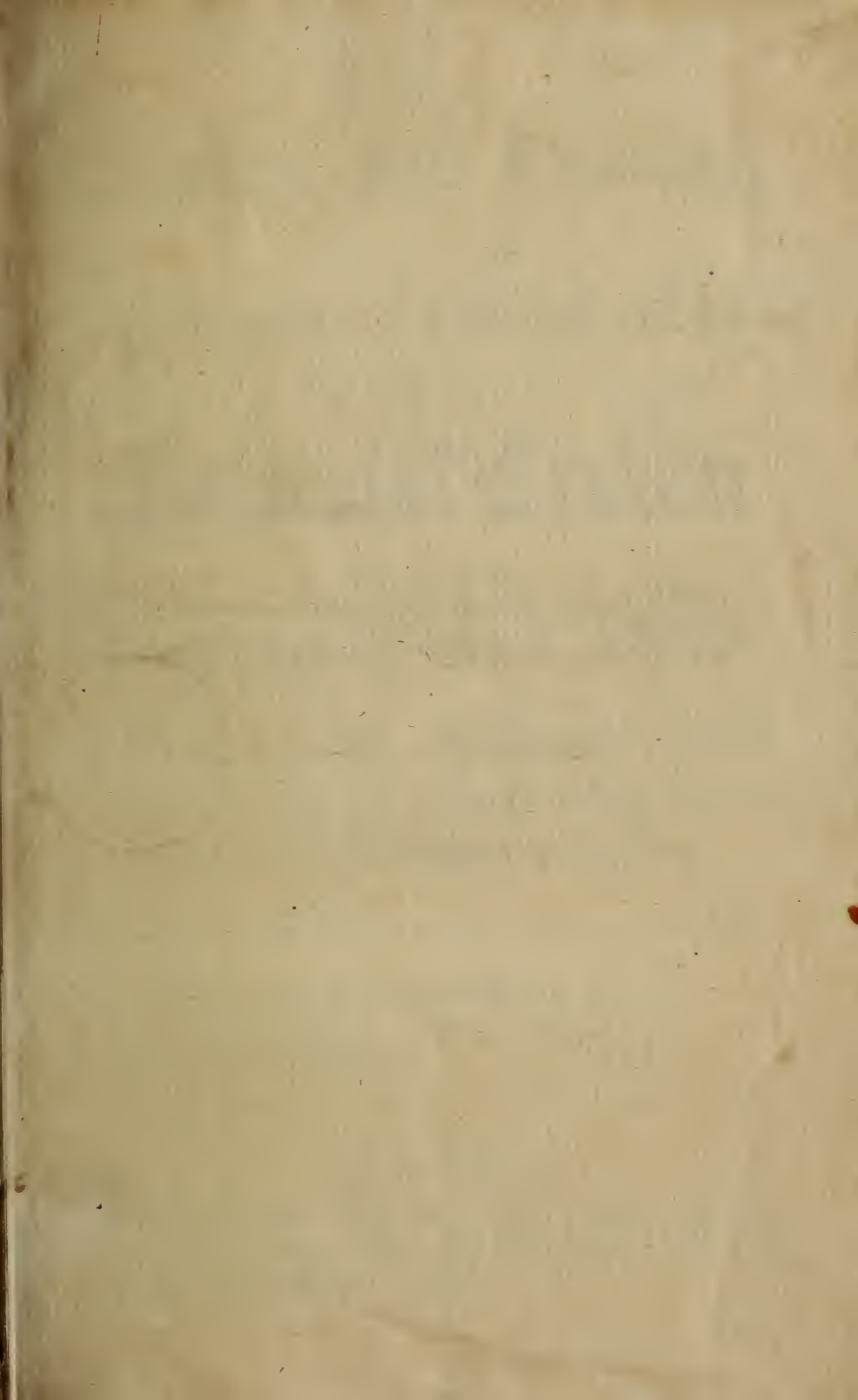


William ATWOOD

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T H E  
History, and Reasons,  
O F T H E  
Dependency of I R E L A N D  
U P O N T H E  
**Imperial Crown**  
O F T H E  
Kingdom of E N G L A N D.

Rectifying Mr. *Molineux's* State  
of the Case of *Ireland's* being bound  
by Acts of Parliament in *England*.

---

*Actum erat de fecundissimâ gente,  
Si libera fuisset. Plin. Panegy.*

---

L O N D O N,

Printed for *Dan. Brown* at the Black Swan and Bible  
without Temple-Bar; and *Tho. Leigh* at the Pea-  
cock in *Fleetstreet*. 1698.

DA 964. G7A86 1698x

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To the Honourable the  
Knights, Citizens, and Bur-  
gesses, in Parliament Assem-  
bled.

**Y**Our House, and they (a) (a) Anciently  
there was but  
one House and  
sometimes one  
undivided Body  
sub dip.  
Thus one of K.  
Egar's Char-  
ters An. 970.  
Non ciam in  
angulo, sed sub  
Divo, palam  
evidentissime  
scientibus to-  
tius regni mei  
Primaibus.  
to whose Rights You suc-  
ceed, having, for several Ages,  
been the Principal Support of the  
English Monarchy; the Ene-  
mies to so excellent a Constitu-  
tion have thought it could never  
be more effectually undermined,  
than by the drawing your Rights  
into Question: and thus have  
many made in their deceitful  
Courts to Princes.

'Tis not for me to determine,  
whether Malice or Sycophantry  
have induced some to deny, your  
a being



## Dedication.

being in any manner invested with that Authority, which they officiously ascribe to the Kings of this Realm, and their Council of Lords, or rather Privy Council; to the derogating from the Lords in Parliament, no less than from You.

I conceive it, allowable for me, to joyn the Men of this assurance with Dr. Brady, and other Advocates for Despotick Power: who have contended, that your first Presence, or Representation, in the National Council,

(d) Dr. Brady's Answer to Mr. Petty l. p. 1, 2. To rescue these sacred things from groundless and designing interpretations: I follow his own Method, and do affirm, 1. That the Commons of England represented by Knights, Citizens, and Burgessees in Parliament were not introduced, nor were one of the three Estates in Parliament before the 49th of H. 3. 2. That before that time the body of the Commons of England, or Freeman as now understood or as we now frequently call them collectively taken, had not any share or vote in making of Laws for the government of the Kingdom, nor had any communication in Affairs of State, unless they were represented by the Tenants in Capite.

(d) 49. of H. 3. which being taken as proved, they conclude, that Kings may as well set you aside, as a

Sub-

## Dedication.

*Subject may any obligation extorted by threats and duress.*

*And whoever has made any attempt towards the removing that Corner Stone for Tyranny, has been sure to incur the imputation of promoting Anarchy : as if your venerable Body did not in the least interpose between those two Extremes.*

*The fairest colour which the Men of Foreign Notions and Allegiance have, for their premises, is from King John's Charter, which as they imagine, has declared or establish'd the Tenents of the Crown in Chief, to be the only legal Members of the Common Council of the Kingdom ; the far different sense of which Charter, I may well say 'twas my fortune to find and evince, upon my  
first*



## Dedication.

(a) Vid. Jani  
Anglor. faciem  
nov. ed. An.  
1680.

(b) Vid. Dr.  
Brady's Ap-  
pend. to his  
Compleat His-  
tory cited in f.

(c) Dr. Brady's  
Introduct. f. 376

Speaking of Seditious Pieces design'd, as he says, to overturn the Government, and publish'd on purpose to usher in Anarchy and Confusion, (leaving a Blank for Mr. Petyt's Name, whom he sufficiently describes) these and other such stuff, says, he did mightily contribute to the Sedition and Rebellious Practices of a Great Man who laid violent Hands upon himself to prevent the Hand and Stroak of Justice. And like to this Piece are Jani Anglor. facies nova, Jus Anglorum ab antiquo, Reflections upon Antidprium Brit. &c. All written and timed to promote Sedition and in expectation of Rebellion and the destruction of the Establish'd Government.

(d)) Jus An-  
glorum ab  
antiq.

(a) first enquiry into the Nature of our Government; since the force of truth has obliged even (b) Dr. Brady to yield it up to me, (c) after all the hard Words which he had given me on that occasion.

Nor has he offered the least Shadow of Evidence against my List (d) from Domesday Book; shewing, that notwithstanding the supposed Conquest of this Land by W. 1. they who had not forfeited their Estates, enjoyed them upon or under Titles Priour to his Entrance; without relation to any Grant, or Confirmation from him.

Permit

## Dedication.

Permit me to say, that the Researches in which this Controversy engaged me, have, in some measure, enabled me to assert your Authority, in the highest Instances of the exercise of Power; and to make out by Deduction, and numerous Presidents, what you have as 'twere by Intuition; that Ireland, as 'tis annexed to the Imperial Crown of this Kingdom; is subjected to that Authority, which is, and must be absolute; and yet can never be gaeivous, because of your share in it.

Tho the bold denial of this, has already receiv'd your just censure of being of dangerous Consequence to the Crown, and People of England: Yet, if I may use the Allusion, I might observe, that 'tis not held improper to make Comments upon the Sacred Text,

Votes, Lunæ,  
27 Junii 1698.

## Dedication.

Text, to explain it to *Vulgar Understandings* : Which, I should hope, may plead in my *Excuse*, if not, *Justification*, while I am proving, that, as you have rightfully concurred with the Lords, in giving Ireland a King, by filling the Vacant Throne ; and that Glorious Preserver of your Liberties has, with the Advice and Consent of the States of this his Realm, made Laws with a declared intention of binding Ireland ; these Acts of Sovereignty, are not only agreeable to the Laws of Nature, and of Nations, but warranted by the Ancient Constitution of this Monarchy.

The foundation of which, while I have been labouring to clear, from that Rubbish which would render it unstable ; it has happened with me, as with those, who having exhausted

Vid. Mat. Par.  
Addit. f. 281.  
De foris facturâ regni per Johannem, & regni vacatione per ejusdem demissionem in manus Papæ.



## Dedication.

*hausted themselves in working a rich Mine, are forced to leave the bright Oar to them that come after : And thus 'tis likely to be with those Collections which I have by me, concerning the Fundamental Constitution of this Government : by which I had flattered myself, that I must have contributed towards the Peace and Happiness of my Country, in shewing the admirable Harmony that there is between the constituent parts of this Empire ; how strong and beautiful they are in their due order ; How conspicuous that Degree of the Baronage, or Nobility of Engl. which you're present, has been in all the Ages of this Monarchy, in maintaining its Glory ; what Persuasive Reasons both Prince and People have, to be satisfied with their several, and yet common*

## Dedication.

mon Interests ; and how little they are to be thought Friends to either, who prompt them, as the Learned Grotius has it,

*In partem non suam involare.*

*Whither I have been any way serviceable to the Publick, or can yet serve it, according to my Zeal ; is submitted to the Collective Wisdom of the Nation: The Judgment is with you ; who, if you should not think this, or any of my former labourous Effects of Idleness, as the Poet calls the Writing of Books, worthy of your Protection, or Notice ; I doubt not will extend your Pardon, to Endeavours consecrated to your use,*  
*By,*

Your Most Faithful and

Affectionate Humble Servant,

*W. Atwood.*



*The History, and Reasons of  
the Dependency of Ire-  
land, upon the Imperial  
Crown of the Kingdom  
of England, &c.*

**A**S there's no need of staying  
for Publick Authority or  
Encouragement, to oppose  
an open Invasion upon the  
Rights of my Country; I cannot  
but think it my duty to make a  
stand, till better help come in, with  
Arms taken up on a sudden; and  
that the rather, since by a shew of  
Precedents, and popular Positions,  
some lovers of *English Liberties* are  
drawn in, to join with the *Invaders*:  
nor do I wonder, to find Sufferers  
under Arbitrary Reigns, easy to be  
misled, by a seeming \* Advocate for  
*mankind*, who undertakes *the Cause*  
of the whole Race of Adam.

\* Mr. Moli-  
neux his Book,  
p. 3. I venture  
to expose my  
own weakness,  
rather than be  
wanting at this  
time to my  
Country; I might  
say indeed to  
mankind; for  
'tis the Cause  
of the whole  
Race of Adam  
that I argue,  
&c.

And yet to any man, who will be at the least pains to think of Consequences, 'twill be manifest, that the *Liberty* which the Gentleman, whom I oppose, contends for, *as the inherent Right of all mankind*, would be a total exemption from all Laws and Government, except such as *Adam* had a right to in the state of Nature : and, for want of knowing who has the title of Descent from him, would turn all Nations to such Commonwealths, wherein every *Paterfamiliâs* is an independent Sovereign. If men were to be considered in such a state, I will agree with him, That *on whatsoever ground any one Nation can challenge Liberty to themselves, on the same reason may the rest of Adam's Children expect it.*

Pag. 3.

But if this be taken with relation to the present Governments in the world ; then, suppose this Gentleman hold a *Commonwealth* to be the freest state of *mankind* ; to be uniform, he must believe, that no *Monarchies* ought to continue longer than the people should think fit :  
be-

because, according to his Maxim, the People of a Monarchy have the same right to *Liberty* that the others maintain: and, directly to the present question, no nation ought to have any dependence upon any other Nation. And, perhaps others will say, *neither ought they to have any protection.*

'Tis certain, that whether we consider the people of the same Nation, or the relation which one Nation has to another, their state or condition, must depend upon Constitutions and Agreements, express, or tacit. Indeed, what Constitutions and Agreements are binding, and for what time, will fall under the consideration of Reason, either of it self, or aided and assisted by Revelation. *S. Paul* having taught us, That *the Powers that are are ordained of God*; I should think that the *common practice of the world* (which this Gentleman admits to be against his Notions) is no small evidence of the right of Acquisitions made by one Nation upon, or over another: But if these could in right

Vid. Plin. Pan.  
Quàm nunc  
juvat, provin-  
cias omnes in  
fidem nostram  
deditionemq;  
venisse. Post-  
quam contigit  
Princeps  
terrarum, &c.

Pag. 25.



\* 'Tis only damage sustain'd that gives title to another man's goods.

be carried no further, than the \* damage sustained by the injured Nation; the bounds of the Acquisitions would be very uncertain, and desultory.

That no true Principle opposes the Power, which *England* claims and exercises, over *Ireland*, might be shewn in a very narrow compass: Yet when many glittering Arguments are made use of, to support an unseasonable as well as groundless complaint; it may be requisite to give direct Answers to those things which may seem most plausible; and to lay such Foundations as may supersede the particular consideration of the rest: to which end I shall shew,

1. The nature of Mr. *Molineux* his Complaint.

2. The true Foundation and Nature of that *Right*, of which *England* is possessed, in relation to *Ireland*; and Mr. *Molineux*'s Mistakes, Omissions, and wrong Comparisons, and Inferences, concerning it.

3. That the Right which was at first acquired, is so far from being de-

departed from, that 'tis rather strengthened, and confirmed: and has been duly exercised, as the good of *England* has required, and in subordination to that: and, even in the greatest Instances now complained of.

4. That his Politicks, and seeming popular Notions, are wrong, and misapplied.

1<sup>st</sup>. Mr. *Molineux* would insinuate into his \* Majesty's belief, in his *Dedication* to him, that some of late endeavour to violate those Rights and Liberties, which the *Irish*, or *English* there, have enjoyed for above five hundred years: And he plainly enough charges, both *Kings, Lords,* and *Commons* of *England*, and that acting *Parliamentarily*, not only with this endeavour, but with actual violations of that, which to him seems, the inherent Right of all mankind.

\* Mr. *Molineux*  
his complaint  
against the  
Parliament of  
England. Vid.  
*Dedication.*

His Service to his Country, and to all the Race of Adam, he supposes to be call'd for, by the present juncture of Affairs, when the business of Ireland is under the consideration of both Houses of the English Parliament:



that is, as his Margin explains it, the Case of the Bishop of Derry in the House of Lords, and the prohibiting the exportation of the Irish Wool-len Manufacture, in the House of Commons.

P. 64, & 66.

He complains, That Acts of Parliament in England, before the 10th of H. 4. and 29th of H. 6. had pretended to bind Ireland, without any confirmation there, tho they have not expresly claim'd this Right:

P. 68, 99.

that there are modern Precedents of English Acts of Parliament pretending to bind Ireland: but these are Innovations; tho, of his own shewing, no more than was done before the 10th of H. 4. But he is sorry to reflect, that since the late Revolution in these Kingdoms, when the Subjects of England have more strenuously than ever asserted their own Rights, and the Liberties of Parliaments, it has pleased them to bear harder on their poor Neighbours, than has ever yet been done in many Ages foregoing.

P. 105.

P. 107.

Nay but one Throne, tho two Kingdoms,

The first attempt which this Gentleman complains of, since his Majesty's happy accession to the Throne

Throne of these Kingdoms, is an Act made, in great compassion, for Relief of the Protestant Irish Clergy: The next is one prohibiting all <sup>P. 108.</sup> Trade and Commerce with France; while England was engaged in an actual War, of which Ireland was a miserable Seat. Another is the Act for the better security, and relief of their Majesties Protestant Subjects in Ireland; wherein K. James's Irish Parliament at Dublin, and all Acts and Attainders done by them are declared void: And 'tis further provided, That no Protestant shall suffer any Prejudice in his Estate, or Office, by reason of his absence out of Ireland since December 25. 1685. And that there should be a remittal of the King's Quit-Rent from Decemb. 25. 1688. to the end of the War. And the last is, That for abrogating the <sup>P. 111.</sup> Oath of Supremacy in Ireland, and appointing other Oaths.

These are the Acts of Parliament, by the suppos'd submission to which, he will have it, that the Rights of the People of Ireland have received the greatest weakening under his Majesty's

*jesty's Reign, and they are made of all his Majesty's Subjects the most unfortunate.*

Pag. 114.

- These Acts are complained of, as Violations of the Rights of a Kingdom (a) compleat and absolute in it self, without any (b) subordination to England, especially in relation to Parliaments: That they are contrary to that (c) amity which should be maintained between distinct Kingdoms, or the Children of one common Parent; which have distinct Rights, and Inheritances, absolutely within themselves: and (d) inconsistent with the Royalties, and Preeminence of a separate and distinct Kingdom. (e) Against the common Laws of England, which are in force both in England and Ireland, by the original Compact. (f) Against the Statute Laws both of England and Ireland. (g) Against several Charters of the Liberties granted to Ireland. (h) Against the King's Prerogative. (i) Against the practice of all former Ages. (k) Against several Resolutions of the learned Judges of former times. Destructive of (l) Property.
- (a) P. 128.  
 (b) P. 129, 133, 139.  
 (c) P. 147.  
 (d) P. 163.  
 (e) P. 154.  
 (f) P. 157.  
 (g) P. 161.  
 (h) P. 166.  
 (i) P. 168.  
 Vid. e Cont. sup.  
 p. 64, & 66.  
 (k) P. 170.  
 (l) Ibid.

In-



## of the Dependency of Ireland.

11

Introductive of (m) *the greatest confusion, and uncertainty imaginable.* (m) P. 171.

And lastly, (n) *inconvenient for England,* (n) Ibid.  
*land, being likely to (o) make the* (o) P. 172.

*Lords and People of Ireland think they are not well used, and may drive them into discontent. And yet this Complaint must be thought very modest, because, if the Great Council of England shall resolve the contrary, he declares he shall then believe himself to be in an Error, and with the lowest submission ask pardon for his assurance.* Pag. 3.

I cannot in the least question, but that *august and wise Assembly* will use that Method which he refers to for his Conviction : yet, since they are employed in Affairs of more immediate consequence, than the asserting and clearing the grounds of that Authority which they have long been possessed of; I shall think that I may do some service to my Country, in shewing,

2ly. The true Foundation of that Right, which *England* is possessed of, in relation to *Ireland*; and what are Mr. Molineux's principal Mistakes, *The true Foundation and Nature of the Right of England over Ireland.*  
Omiss.

Omissions, and wrong Comparisons, and Inferences, concerning it. Here I hope to make it evident,

1. That he mistakes the Grounds for the submission of *Ireland* to *H. 2.* as well as the Nature of it; and omits material Passages which may illustrate that matter.

2. That if he had been as conversant in *Histories*, and *Records*, as he would be thought; he could never have had *assurance* enough to assert, that *England may be said much more properly to be conquer'd by W. 1. than Ireland by H. 2.*

3. That he is as much mistaken in his comparison between *Scotland* and *Ireland*; and that matter of his own shewing, or admission, might have convinced him of an *essential difference*.

Pag. 6.  
Of the first annexation of the Land of Ireland to the Crown of England.

1. This *Gentleman* pretends to give the History of the *Expedition of the English into Ireland*; which he supposes to have been in the Reign of *H. 2.* and that all the Right which has been acquired by *England*, to have any Government, or Superiority, over that Nation, was



was derived from within that King's Reign. Which manifests his having seen very little of our English Antiquities; and his not attending to what Irish Acts of Parliament might have taught him.

The Confessor's Law, under the Title of *the Rights and Appendages, or Dependencies, of the Crown of England*, expressly names *Ireland* as one, which it supposes to have been first annexed to the Crown of *England* by King *Arthur*. Accordingly, besides other Authorities which might be produced, a very Antient (a) Manuscript in Latin Verse in the Cotton Library, ascribed to a *Gildas*, who lived in the Year 860. speaking of several things done by that King in this British Kingdom, says;

Lambard's *Archæologia*, f. 148. de Jure & Appendicis Coronæ Regni Britannia.

(a) Biblioth. Cot. sub effigie Julii.

B. II.

*His ita dispositis in regnum tendit T-  
(bernum.*

“ These things thus settled, he for  
(*Ireland* goes.

Another (b) Manuscript in the Cotton Library, treating of the number

(b) Claudius. D. 2.

Na.

(c) Guernsey,  
as I take it.

Circa 24 m/n-  
ap.

ber of the Counties of *England*, and the *Countrys*, and *Islands*, which of *Right*, and *without doubt*, belong to the *Crown*, and *Dignity of the Kingdom of Britain*, and the several *Laws* or *Customs*, by which they were governed; among the places subject to the *Danelege*, mentions *Man*, the *Orcades*, (c) *Gurth*, and the other *Islands of the Western Ocean*, about or in the way towards *Norway*, and *Danemark*: within which we may well think *Ireland* to have been meant, since the *Isle of Man* is one of the *Islands*, theretaken to be about, bordering upon, or in the Road to *Norway*, and *Denmark*.

Tho the *Confessor's Law* places the Foundation of the *Right of the Crown of England to Ireland*, in the acquisition of *King Arthur*; it must be agreed, that this was so antiquated, and so many Changes had happened in the State of this Nation, between his time and *King Edgar's*, that he might well have no regard to any *Right from King Arthur*: And, however, might suppose himself to have been the first  
of

of the *Anglo-Saxon* Kings, who had subjected *Ireland*, or *the greatest part of it*, to the *Crown of England*; which that he did, we have the Testimony of his memorable Character.

Ego Eadgarus Anglorum Basilius, omniumq; Regum insularum, quæ Britanniam circumjacent, cunctarumq; nationum quæ infra eam includuntur, Imperator, & Dominus; Gratias ago Deo Omnipotenti Regi meo, qui meum Imperium sic ampliavit, & exaltavit, super Regnum patrum meorum; qui, licet Monarchiam totius Angliæ adepti sunt, à tempore Ayelstani, qui, primus Regum Anglorum, Nationes quæ Britanniam incolunt sibi armis subegit: nullus

*I* Edgar, King of the English, and Emperor and Lord of all the Kings of the Islands which lie about Britain, and of all Nations that are included within it, give Thanks to God Almighty my King, who hath so enlarged and exalted my Kingdom above the Kingdom of my Ancestors; who, altho they had gain'd the Monarchy of all England, from the time of King Athelstan, who was the first of the Kings of the English that brought under him by Arms the Nations which inhabit Britain: yet none of

Rot. Cart. 5.  
E. 2 m. 12.  
n. 25. & 3 E.  
3. m. 10. n. 23.  
Pro Priore &  
Conventu Wigorn. per inspeximus.  
An. 964. regni sui 6.



nullus tamen eorum of them attempted to  
 ultra ejus fines, Im- stretch his Empire be-  
 perium suum dila- yond its bounds. But  
 tare aggressus est. the propitious Divini-  
 Mihi autem concessit ty has granted me,  
 propitia divi- with the Empire of  
 nitas, cum Anglo- the English, to put  
 rum imperio, om- under the Dominion  
 nia Regna Insula- of the English, all  
 rum Oceani, cum the Kingdoms of the  
 suis ferocissimis Re- Isles of the Ocean,  
 gulis, usque Nor- with their fiercest lit-  
 vegiam, maximam- tle Kings, as far as  
 que partem Hiber- Norway, and the  
 niæ, cum suâ no- greatest part of Ire-  
 bilissimâ civitate land, with its most  
 Dubliniâ, Anglo- noble City Dublin:  
 rum regno subjace- Even all those, by the  
 re. Quos etiam Ar- help of God's Grace,  
 mis meis imperiis I have compell'd to  
 colla subdere, Dei submit their Necks to  
 juvante gratiâ, coe- my Commands.  
 gi.

From this time 'twill be evident,  
 to any who observe the stiles of our  
 Kings, till *H. II's* time, that the Au-  
 thority of *England* over *Ireland* was  
 taken to be included under the stile  
 of King of the English Saxons, of  
*Britain*, of the Island of *Albion*, or  
 the like: not but that, for several  
 Reigns

Reigns before the time of *H. II.* Parliaments, in which the King's Charters pass'd, were often careful to have the stile more expressive of the Title to the Dominions out of *England*. For instances of both kinds :

*Edgar*, after the Charter above cited stiles himself,

Basileus dilectæ In-	<i>King of the Beloved</i>	Rot. Pat. 12.
sulæ Albionis, sub-	<i>Island of Albion,</i>	E. 2. m. 13.
ditis nobis sceptris	<i>the Scepters of the</i>	n. 42.
Regum Scottorum,	<i>Kings of the Scots,</i>	Rot. Cart. 2.
Cumbrorumque ac	<i>the Cumbers, and</i>	E. 3. m. 23.
Britonum, & omni-	<i>the Britons, being</i>	n. 78.
um circumcirca Re-	<i>subject to us, and of</i>	An. 970. &
gionum.	<i>all the Regions round</i>	Cart. Antiq. in
	<i>about.</i>	Turr. Lond.
		B. n. 11.

In another ;

(a) Basileus Anglo-	<i>King of the English,</i>	(a) Rot. Cart.
rum, & Imperator	<i>and Emperor of the</i>	5. E. 2. m. 12.
Regum Gentium.	<i>Kings of Nations.</i>	n. 25.

After this King *Ethelred* stiles himself sometimes ;

(b) Ego Adelred	<i>I Athelred govern-</i>	(b) Rot. Cart.
totius Albionis Mo-	<i>ing the Monarchy of</i>	5. E. 3. m. 10.
narchiam guber-	<i>all Albion.</i>	n. 17. per
nans.		Prior & Con-
		vent. sanctæ
		Frischeswide.
		Oxon. An.
		1084. regni
		25.

Subscribes,

Rex Anglorum. *King of the English.*

B

Some-

# The History and Reasons

Sometimes,

(a) Rot. Cart. (a) Ego Athelred I Athelred *King of*  
 5. E. 3. m. 32. totius Britanniae *all Britain.*  
 n. 85. A. 979. Basileus.

Sometimes,

(b) Rot. Cart. (b) Ego Ethelred I Ethelred *Mo-*  
 36. E. 3. m. 7. Britanniae totius *narch of all the Bri-*  
 n. 3. A. 964. Anglorum Monar- *tain of the English.*  
 chus.

Sometimes,

(c) In Bib. Cot. (c) Ego Ethelred I Ethelred *King of*  
 An. 1001. totius Insulæ. *the whole Island.*

Subscribes,

Rex & Rector An- *King and Ruler of*  
 gulfexna. *the Anglo-Saxons.*

That *Ireland* and other Kingdoms and Dominions, were included within this stile, will appear by other Charters of the same King. Thus he stiles himself,

(d) Monast. i. (d) Totius Anglo- *King of all the Eng-*  
 vol. f. 94. a. rum Gentis Basile- *lish Nation, and ha-*  
 A. 983. os, cæterarumque *ving the Supremacy*  
 Nationum in circu- *over the other Nati-*  
 itu persistentium, *ons living round a-*  
 primatum gerens. *bout.*

At



At another time he stiles himself;

(a) Ego Ethelred Rex Anglorum, aliarumque gentium in circuitu perstitentium. I Ethelred King of the English, and of other Nations living round about. (a) Rot. Cart. 5. E. 3. m. 32. n. 85. pars unica. A. 987.

And the same stile (b) he uses in the Year 1001. tho, as appears above, in another Charter of the same Year, he stiles himself only King of the whole Island. And in another, (c) at the beginning of his Reign, only King of the English. (b) Hist. Elyens. in Bib. Cotton. (c) Vid. Rot. Cart. 2. R. 2. m. 13. n. 5. Bib. Cot. sub. effig. Claudii c. 9. Hist. Eccles. Abind. Cart. Antiq. B. n. 4. K. n. 22.

W. I. generally stiles himself no more than King of the English, or King of the English, and Duke of Normandy. Yet, as one of his Charters has it, he was (d) the most powerful of all the Kings of that time, ruling the greatest Empire of England. That other Nations were then held to be Dependencies upon the Kingdom of England, appears by a Charter of his in the 15th of his Reign, which begins;

(e) Ego Gulielmus Deo disponente rex Anglorum, cæterarumque gentium I William by God's Disposal King of the English, and Ruler of the rest of the Nations (e) Cart. Antiq. Q. n. 2. An. 1081. B 2 round

circumquaq; perli- round about, and  
stentium Rector, & Duke of Norman-  
Dux Normannorū. dy.

After his time his Successors, till  
*H. 2.* left the Dependencies of *Eng-  
land* out of their Stile, adding only  
other Dominions, which they had  
as distinct and independent.

Thus *H. 1.* to mention no other,  
stiles himself *King* of the *English*,  
and *Duke* of *Normandy*; but before  
the death of his Brother *Robert*, on-  
ly \* *King* of the *English*.

\* Bib. Cot. sub  
Effigie Clau-  
dii 9 Regist.  
Abind. dehund.  
de Hormmere.

Of the Supe-  
riority and Au-  
thority of the  
Church of Eng-  
land over the  
Church of Ire-  
land.

Not here to bring other Evidences,  
of the continuance of the Superiority  
over *Ireland*; to turn † *Mr. Moli-  
neux* his Argument upon him, if I  
shew the *Church* of *Ireland* to have  
been then dependent upon, or un-  
der the *Church* of *England*, he must  
not deny but the State was too.

\* Parker's An-  
tiq. Brit. Et  
quiq; Nobiles  
cum Clero.

Archbishop *Parker*, who must be  
allowed to have seen and understood  
the Evidences of the Rights of the  
*See* of *Canterbury*, and is agreed to  
be

---

† P. 129. If our Church be free and absolute with-  
in it self, our State must be so too.

be a faithful *Collector*, speaking of the time of *H. 1.* shews, that upon the vacancy of the Bishoprick of *Waterford*, *Murchertach* King of *Ireland*, with the *Bishops*, all the *Nobility*, and the *Clergy*, and *People* of the *Island*, sent to *Anselm* Archbishop of *Canterbury*, desiring

Quatenus ipse, pri-	<i>That by the Power of</i>
matûs quem super	<i>the Supremacy which</i>
eos gerebat pote-	<i>he had over them,</i>
state, & quâ funge-	<i>and the Apostolical</i>
batur Apostolicâ	<i>Authority which he</i>
fretus Autoritate,	<i>enjoyed, he would be</i>
sanctæ Christiani-	<i>aiding to holy Chri-</i>
tati, ac necessariæ	<i>stianity, and the ne-</i>
plebium utilitati	<i>cessities of the people.</i>
eis subveniret.	

\* At their request, he upon the death of the Bishop of *Dublin*, con-  
 secrated one *Malchus*, whose Bishop-  
 rick † Pope *Eugenius* raised into an  
*Arbishoprick*: But notwithstanding  
 the Popes, *Eugenius* and *Adrian*, had  
 constituted Archbishops there; yet  
 they all acknowledged || the *Supre-*  
*macy* of the See of *Canterbury* in all  
*things*.

\* Petitioni eorum Annuit.

† Fo. 23.

Ann. 1151.

Ibid.

|| Ib. F. 23.

Nihilominus Cant. Primatem in omnibus agnoscunt.



And after Archbishop Parker had enumerated 33 *Bishopricks* in *Ireland*, he adds,

\* *Antiq. Brit.* sup.

\* *Hi omnes 33 Episcopatus, usitato & antiquissimo regni jure, ac instituto, Cantuar. sedi ut Metropoli parent.*

*All these 33 Bishopricks, by the accustomed and most antient Right and Constitution of the Kingdom, obey the See of Canterbury as the Metropolis.*

If it were doubtful whether he meant that this *Right* was, by the antient *Constitution* of the Kingdom of *England*, the former Authorities make it evident that it was. However I shall confirm them with two more.

*Inter decem script. Gerv. Dorob. Actus Pontif. Cant. F. 1633. Ann. 605.*

*Gervace of Canterbury*, who lived in the time of *H. 2.* speaking of *Lawrence* Archbishop of *Canterbury*, who succeeded the reputed *English* Apostle *Austin*, says,

*Nec non & Scothorū qui Hiberniam in-*

He not only took care of the new *Church* gathered out of the *English*, *fulam Britanniae proximam incolunt, pastorem impendere sollicitudinem curabat.*

but

but of the *old British Inhabitants*; and also took care of his *pastoral Charge over the Scots*, who inhabit Ireland, an Island very near Britain.

Bromton, an Author who is cited by Mr. Molineux, mentioning the Dispute about Superiority, in the Great Council, or Parliament at Winchester, in the beginning of the Reign of W. I. between Lanfranc Archbishop of Canterbury, and the then Archbishop of York, says \*,

Brompton, F. 970, 971. de An. 1071.

\* Not that the whole History need have been read in the Council, but the chief Passages produced by them who had read it.

Ubi Historia Bedæ Where the History of Bede having been read, 'twas shewn that from Austin's first coming to the end of Bede, which was about 140 years, the Archbishop of Canterbury held the Primacy over the whole Island of Britain, and of Ireland.

Thus I think 'tis past dispute, that a superiority of Government,

both in *Church* and *State*, was vested with the *English*, and by consequence in the Crown of *England* as the *Head*, from the 6th of King *Edgar* at the latest, to the year 1151. when the Jurisdiction of *Anselm* Archbishop of *Canterbury* was submitted to by the *Irish*, as the ancient and undoubted Right of that See.

Nor can it be imagined, without some account of the Circumstances, that the Superiority and Authority of *England* should have been lost  
P. 8. An. 1172. in less than 22 years, when Mr. M. supposes the Pretensions of *England* to have had their first ground.

P. 6, 7, 8. of H. 2d's landing in Ireland. He will have H. 2. his landing in *Ireland*, to have been occasioned only by a fortunate Expedition thither by some of his Subjects a little before; in assistance of some of the Princes, or Kings of *Ireland*, who had been oppress'd by a too powerful Neighbour; and would insinuate as if the *Deliverers* were only entitled to be paid for the assistance which they gave: and he is so bountiful,



tiful, as to *allow that* England ought P. 144.  
to be repaid all their *Expences* in sup-  
pressing the late Rebellion.

But, as *England* has suppress that  
Rebellion against the *English Crown*,  
it appears by what has been above  
cited, that the disputes between the  
Kings of *Ireland* only gave *H. 2.*  
opportunity, and encouragement, to  
assert the Authority of the *English*  
*Nation*, and to restore to the Crown  
the possession of the City of *Dub-*  
*lin*, and so much of the *English Pale*  
as could then be gained, with such  
addition as they could make in a just  
War, to secure those Bounds which  
had been invaded, and usurped upon  
by a barbarous Enemy.

In this *H. 2.* was not to be blam-  
ed, for that Ambition which has  
carried Princes to make *Conquests* ;  
since his Expedition was no more  
than he was obliged to as *King* of  
*England* : For as the *Confessor's* Law  
has it,

*The justification  
of H. 2d's  
Expedition.*

Lambard's Ar-  
chaionomia,  
F. 138. De  
Regis Officio,  
&c.

Debet vero de ju-  
re Rex omnes ter-  
ras, & honores, om-  
nes dignitates, &  
jura, & libertates  
coronæ regni hujus,  
in integrum, cum  
omni integritate, &  
sine diminutione,  
observare, & defen-  
dere; dispersa, &  
dilapidata, & omis-  
sa, regni jura, in  
pristinum statum &  
debitum, viribus  
omnibus revocare.

*But the King ought  
of right to keep and  
defend all the Lands,  
and Honours, all  
Dignities, & Rights,  
and Liberties, of the  
Crown of this King-  
dom, with all integri-  
ty, and without di-  
minution: with all  
his might, to bring  
back to the antient  
and due state, the di-  
persed, dilapidated,  
and lost Rights of  
the Kingdom.*

Vid. Leges St.  
Edw. Tit.  
Greve.

This was not only incumbent up-  
on the Prince, but upon the People  
also, who were *sworn Brethren* to de-  
fend the Kingdom against Strangers,  
and against Enemies, together with  
their Lord and King; and *with him*,  
to keep *his Lands*, and *Honours*, with  
all Fidelity.

Accordingly, when the Pope ci-  
ted E. 1. to answer judicially be-  
fore him, concerning his Right o-  
ver Scotland, the Parliament say,

“The

“ The Premises would manifest-  
 “ ly turn to the *disherison* of the Ryley's Placita  
Parl. 29 E. 1.  
 “ Right of the Crown of the King-  
 “ dom of England, and of the Royal  
 “ Dignity, and notorious subversion  
 “ of the state of the said Kingdom :  
 “ And also to the prejudice of the  
 “ Liberties, the Customs, and Laws  
 “ of our Ancestors. To the obser-  
 “ vation of which we are bound,  
 “ by virtue of the Oath we have tak-  
 “ en; and which we will maintain  
 “ with all our Power, and, by God's  
 “ assistance, will defend, with all our  
 “ might. Nor also do we, or can we,  
 “ as indeed we may not, suffer our  
 “ Lord the King, even tho he would,  
 “ to do, or in any wise attempt the  
 “ Premises, &c.

Here's a ground to justify H. 2.  
 and the People of England at that  
 time; which *this Gentleman* never  
 thought of.

And Giraldus Cambrensis, an Au-  
 thor received by him, and an Irish Vid. Inf.  
 Parliament, has shewn another, from  
 the nature of the Irish, the necessity  
 of their Reformation, and that Au-  
 thority



thority which the generality of Christians in those dark Ages plac'd in the Pope.

As to the Character of the People, after *Girald* had condemned their Clergy, for not doing their duty among them, he says,

Anglia sacra,  
Giraldus Cam-  
brensis de re-  
bus a se gestis,  
Pars 2. c. 14.

Ut enim de per-  
juriis eorum, & pro-  
ditionibus, de fur-  
tis, & latrociniis,  
quibus totus hic po-  
pulus prope mo-  
dum, immopræter  
modum, indulget;  
de vitiis variis &  
immunditiis nimis  
onormibus, quas to-  
pographia decla-  
rat, ex toto non  
emittamus; Gens  
hæc Gens spurcissi-  
ma, Gens vitiis in-  
volutissima, Gens  
omnium Gentium  
in fidei rudimentis  
incultissima.

*For not wholly to o-  
mit speaking of their  
Perjuries and Treas-  
ons, of the Thefts and  
Robberies which this  
whole people in some  
measure, rather with-  
out measure, indul-  
ges; of their various  
vices and unclean-  
nesses too enormous,  
which our Topogra-  
phy declares; This  
Nation is a Nation  
most vile, a Nation  
the most drown'd in  
Vices, a Nation of all  
Nations the most ig-  
norant in the Rudi-  
ments of Religion.*

This being the nature of the Peo-  
ple at that time, there might seem,  
if

if there had been no prior Title, to have been as much a right of *occupancy*, as any Nation has had by the first possessing the Lands of Savages: but if the right of civilizing the barbarous part of Mankind was not sufficient, that Power which the then general consent of Nations had placed in the Pope, joined with the other, made a Title, which none but the Barbarians then disputed. This *H. 2.* had amply and formally.

*Giraldus Cambrensis* not only in-  
forms us, that the *Pope* gave *H. 2.*  
licence to subdue the *Irish*, but ex-  
hibits the *Bull* at large, which, re-  
citing the King's Intention of en-  
tring the *Island of Ireland*,

Angl. fac.  
sup. pars 2.  
F. 485. speak-  
ing of King  
John, Pater  
ipsius intran-  
di Hiberniam,  
sibi; subju-  
gandi, ab ec-  
clesia Romana  
licentiam im-  
petravit.

Ad subdendum  
populum illum le-  
gibus, & vitiorum  
plantaria inde ex-  
tirpanda, & de sin-  
gulis domibus an-  
nuam unius denarii  
B. Petro velle sol-  
vere pensionem, &  
jura

To subdue that peo-  
ple to Laws, and ex-  
tirpate the plantati-  
ons of Vices from  
thence; and that he  
will pay to St. Peter  
the annual Pension  
of a Penny out of e-  
very House, and pre-  
serve

## The History and Reasons

jura Ecclesiarum *serve the Rights of*  
 terræ illius illibata *the Churches of that*  
 & integra conser- *Land unprejudiced*  
 vare; *and entire;*

Pro dilatandis  
 Ecclesiæ ter-  
 minis, &c.

Declares the Pope's approbation  
 of that King's attempting that Is-  
 land, *for enlarging the bounds of the*  
*Church, for restraining the course of*  
*Vices, for correcting their Manners;*  
*and sowing Virtues, for the encrease*  
*of the Christian Religion.*

And this Pope desires the King's  
 purpose may take effect, *for the Ho-*  
*nour of God, and Salvation of that*  
*Land;* and that the People of that  
*Land* should receive him honoura-  
 bly, and reverence him *as their*  
*Lord.*

Jure nimirum e *The Right however*  
 contrario illibato & *remaining unpreju-*  
 integro permanen- *diced and entire, and*  
 te, & salva B. Petro *saving to St. Peter,*  
 & S. R. E. de singu- *and the holy Church*  
 lis domibus unius *of Rome, the pensi-*  
 denarii pensione. *on of a Penny out*  
*of every House.*

The



of the Dependency of Ireland.

31

The Right of the Church was hereby reserv'd unprejudiced: the Recital seems to make it to relate to the particular Churches; and this Mr. *Molineux*, if he please, may take to amount to such a Freedom, as exempted them from the Jurisdiction of the Pope, as well as of the See of *Canterbury*: but he may easily observe that the Superiority of both is fully reserved, and implied under *jure illibato & integro permanente*.

V. p. 129. Ho-

ly Church shall be free, &c.

If our Church be free and absolute within it self, our State must be so likewise.

It thus appearing, that this Gentleman had not attended to the true grounds of *H. 2d's* Attempt upon *Ireland*, I shall consider what Submission the Irish made to him, and in what sense he and his Parliament took it. 'Tis evident beyond contradiction, that they did not submit to him as to a King, whom they chose to govern according to their own Laws, but as one that imposed, and was to impose Laws upon them: Of this Mr. *Molineux* seems so much aware, that where he speaks of the submitting to *H. 2.* he only mentions the general terms of receiving him

P. 10, & 11.

P. 28.

Of the Submission of the Irish to H. 2.

V. p. 10.  
Cited by him.

him for *King and Lord of Ireland*, and swearing Allegiance to him and his Heirs, or the like: but the swearing to the Laws of *England* he places among the *Concessions*; as if they were no otherwise subject to them than the People of *England*.

'Tis to be observed, for proof that the Submission was truly voluntary, and that there was such a Consent as is essential to the making Laws to bind Posterity; that upon *H. 2's* landing at *Waterford*, several of the Irish Kings, and almost all the Nobility of *Ireland* flock'd in to him; that the Archbishops, Bishops, and Abbats of all *Ireland* receiv'd him for *King and Lord of Ireland*, and swore to him and his Heirs, binding themselves by their Charters to perpetual Allegiance; and that after their example, and in like manner, the Kings and Princes there present receiv'd him for Lord and King of *Ireland*.

Upon which I need not observe the known difference taken in *Pliny*, and other good Authors, between *Dominus* and *Princeps*; since after this



this the King held a Council at *Lismore*, cited by this Gentleman in a wrong place.

P. 28.

Ubi leges Angliæ *Where the Laws of*  
 sunt ab omnibus *England are thank-*  
 gratanter receptæ *fully received of all,*  
 & juratoriâ cautio- *and confirm'd by a*  
 ne confirmatæ. *juratory Caution.*

And for a farther Security, the King possess himself of several Cities and Castles, which he put into safe hands; but of this Mr. M. takes no notice.

Mat. Par. ib.  
 Urbes & Castella quæ Rex in sua receperat, sub fidei custodia deputavit.

As a cotemporary Exposition is ever of greatest Authority, let's see whether the meaning of this was, that *Ireland* was to be govern'd by Parliaments of its own, as *free and independent as England*; or that it should be governed by the *Laws made, and to be made, by England.*

Mr. *Molinæux* confesses, that *H. II.* within five years after his Return from *Ireland* created his younger Son *John* King of *Ireland*, at a Parliament held at *Oxford*: he might have learn'd from the same Autho-

P. 29.

C rity?



Hoveden.  
f. 323.

rity, that in that Parliament he not only disposed of several petty Kingdoms there, to hold of him and John his Son, but *Hoveden* has these words, which comprehend Lands as well as Governments.

F. 324.

Postquam autem Dominus Rex apud Oxenford, in prædicto modo, terras Hiberniæ & earum servitia divisisset; fecit omnes quibus earundem custodias commisserat, homines suos & Johannis filii sui devenire.

*But after the Lord the King had at Oxford, in manner aforesaid, divided the Lands of Ireland and their Services; he caused all those, to whom he had committed the Custody of them, to do homage to him and his Son John, & to swear Allegiance and Fidelity to them.*

Int. Decem  
script.  
Bromton de  
cod. An.

*Bromton* says;

Apud Oxoniam idem Rex Angliæ Johannem filium suum, coram Episc. & regni sui Princip. Regem Hiberniæ constituit. Et postea fecit quosdam familiares suos sibi & Johanni filio suo ligantias, fidelitates &

*At Oxford the said King constituted his Son John King of Ireland, before the Bishops and Princes of his Kingdom. And afterwards he made some of his Courtiers to do and swear Allegiance, Fidelity, and Homage to himself and*

& homagia, contra *and his Son John,*  
 omnes homines, fa- *against all men: To*  
 cere & jurare. Qui- *whom he gave and*  
 bus terras Hiber- *distributed the Lands*  
 niæ dedit & distri- *of Ireland in this*  
 buit in hunc mo- *manner, &c.*  
 dum, &c.

If what the King did in a Parlia-  
 ment was a Parliamentary Act, here  
 was an Act of the English Parlia-  
 ment, which, by Mr. *Molineux's* Vid. Inf.  
 Confession, *impos'd a King upon Ire-* In truth he was  
*land,* to whom they had not sworn but Viceroy.  
 any otherwise than as they swore to  
 submit to the English Laws: and  
 he should have observed, that here-  
 in, according to his own inference,  
 of the making *Ireland* a separate  
 Kingdom, the English Parliament  
 undertook to discharge the Oath V. p. 10.  
 which the Irish had taken to be true Jurantes ei &  
 to *H. 2.* and his Heirs; and sutable hereditibus suis  
 to the Legislative Authority over  
*Ireland* in this Particular, the same  
 Parliament at *Oxford* disposed of and  
 distributed the Lands of *Ireland,*  
 without expecting any Ratification  
 from thence.

Here's a Parliamentary and co-  
 C 2 temporary



P. 154.

temporary Exposition, of what this Gentleman calls the *Original Compact* between *England* and *Ireland*.

I must agree, tho he has not observ'd it, that notwithstanding *H. II.*'s Acquisition in *Ireland*, an Irish Native had quiet possession of a Kingdom which he seem'd to claim as chief King over the Irish. This was *Roderic* King of *Connaught*, who upon paying his Tribute, and performing his appointed Service, was, (a) according to *Hoveden*, to hold his Land as he held it before *H. II.* enter'd *Ireland*: which could not be true in a strict sense, unless he were dependent upon the Crown of *England* before; and however, this was a Grant after a more absolute Acquisition: and (b) three years after, *Girald* holds, as do the Irish Statutes, that he had (c) conquer'd the whole Land of *Ireland*.

(d) Abbat *Benedict*, an Author of that time, to be seen in the *Cotton* Library, speaking of *H. II.* says,

Concedit Roderico He grants to Roderic his Leige-man,  
ligio suo Regi Con- King of Connaught,  
nautæ, quamdiu ei  
fide- that

(a) Hoveden. f. 312. Sicut renuit antequam dominus Rex intravit Hib.

(b) An. 1175.

(c) Gir. Camb. expug.

Hib. c. 34. de

An. 1177. Anno primo quo illustrissimus

Anglor. R. & Hib. triumphator, ipsam insulam acquisivit.

(d) Benedict. Abbas, p. 69.

cited in Dr. Bradey's Appendix. f. 39.



<p>fideliter ferviet, ut sit Rex sub eo, pa- ratus ad servitium suum: salvo in om- nibus jure &amp; hono- re Domini Regis Angliæ, &amp; suo.</p>	<p><i>that as long as he faithfully served him, he should be a King under him, ready for his Service: saving in all things the Right and Honour of the Lord the King of England, and his.</i></p>
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As it appears by Record, by the  
7<sup>th</sup> of King John, the King of Con-  
naught had two thirds duly taken  
from him, for not performing his  
Service; or else he never had more  
than a third of that Kingdom grant-  
ed; for then he acknowledged that  
he held a 3<sup>d</sup> part in the name of a  
Barony, and for the other two  
thirds proffers the King,

Rot. Claus. 7.  
Jo. m. 5.

Nomine Baro-  
nia.

<p>Duos Cantredos, cum Nativis eorun- dem Cantredorum, de prædictis duabus partibus, ad firman- dum in eis, vel faci- endum inde volun- tatem suam.</p>	<p><i>Two Cantreds, with the Natives of those Cantreds, to let 'em to farm, or to do with them what he pleas- ed.</i></p>
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Thus I take it, his Kingdom was  
as much dependent upon the Crown

of *England*, as any Barony in *Ireland*, or *England*, and as subject to Forfeiture.

Davis Rep.  
£. 38.

And 'tis probable, that this King was the head of the *O Conoghors* of *Connaught*, who are, 3 E. 2. admitted to be entituled to the English Law.

But tho the Law of *England* was not current beyond the English Pale, or those *Cantreds* and Divisions of *Irish*, who continued under Obedience to the English; yet the Crown of *England* has, from very antient times, not only laid claim to the Lordship over the whole Land of *Ireland*, but their Parliaments have recognized this Right more than once.

*Of the Antiquity of the Right of the Crown of England to the Land of Ireland, recognized by Parliaments there.*

Stat. 11 Eliz.  
Ses. 3. c. 1.  
£. 273.

Mr. M. if he had pleased, might have found, that Acts of Parliament made in *Ireland* lay a much earlier Foundation of the Right of the Crown of *England* to the Land of *Ireland*, even than our Confessor's Law does. A Statute made in *Ireland*, 1 Eliz. among *sundry Titles*, which the antient Chronicles in the Latin, English and Irish Tongues, alledge for the Kings of *England* to the

the Land of Ireland, derives one from Gormond Son of Belin, King of Great Britain.

This King our Historians call *Gurgunstus*, and is said to have reigned in Great Britain 375 years before the Christian Æra. *Grafton*, agreeing with the Irish Statute, tells us, that in his return from Denmark, he met with a Fleet of Spaniards, which were seeking for Habitations, to whom the King granted the Isle of Ireland to inhabit, and to hold of him as their Sovereign Lord.

The Statute made in Ireland, 13 C. 2. recognizing his Title, has these words; “ Recognitions of this nature may seem unnecessary “ where your Majesty’s Title to this your Realm is so clear, as that it is avowed in sundry Acts of Parliament heretofore made within this Kingdom, in the times of your Majesty’s Royal Progenitors of famous memory: and so AN- TIENT, AS IT IS DEDUCED NOT ONLY FROM THE DAYS OF KING H. 2. your Majesty’s Royal Ancestor, BUT



“ FROM TIMES FAR MORE  
 “ ANTE~~N~~ENT, AS BY SUNDRY  
 “ AUTHENTICK EVIDENCES  
 “ MENTIONED IN THE SAID  
 “ ACTS, AND RECORDS OF  
 “ THIS YOUR MAJESTY’S KING-  
 “ DOM, MAY EVIDENTLY APPEAR.

Since Mr. *Molineux* allows Acts of Parliament made in *Ireland*, to have full Authority; I hope he will confess, that he has given a very imperfect and undue account how *Ireland* became a Kingdom annexed to the Crown of *England*; and thus, not here to observe that he need not have gone so far back to shew how it first became a Kingdom, I think I have made it evident, that he has fail’d in his first Undertaking.

P. 4.

Of the comparison between W. 1. and H. 2. and of the stile and notion of Conquest.

Davis’s Rep. t. 41. Case de Tanistry.

2. ’Twill be as evident, that he is no less injurious to the Right of the English Nation, than unhappy in the comparison, where he maintains, that *England may be said much more properly to be conquer’d by W. 1. than Ireland by H. 2.* tho in this he has the Authority of Sir *John Davis*. I will agree, that the word *Conquest* was in the times both of *W. 1.* and

*H. 2.*

H. 2. of a very innocent signification; for which he rightly cites Sir Henry Spelman, and might have observed a much greater and antienter Authority, in a Record of the time of King John, referr'd to by

(a) Mr. Petyt: wherein a younger Brother, in a Suit between him and his elder Brother about Title to Land, pleads, that his Father had it *de Conquestu suo*, and gave it him; according to the distinction in *Glanvil*, who wrote in the time of H. 2. between (b) *Questus*, the same with *Conquestus*, and *Hereditas*. 'Tis certain the word *Conquestus* did not in that age imply any thing of that Power, which a Prince or State might acquire, by Force or Terror of Arms, over another Prince or State; and therefore I shall make no use of his Admission, that H. 2. took *Conquestor Hibernie* into his stile, contrary to the Authority of (c) Mr. Selden, cited in his Margin, and to which I cannot but subscribe. In truth, tho (d) H. 2. was stiled Lord of Ireland, I am very well assured none can be found where he is stiled

12, & 13.

(a) Vid. Mr. Petyt's Pref. to the Rights of the Kingdom. Mic. 2. Jo.

The same transcribed more at large in Hales's Collect. in Bib. Hospitii Lincoln.

(b) Glanvil. de legibus, lib. 7. c. 1. Vid. ib. aut habet hereditatem tantum, aut questum tantum.

(c) P. 14. (d) Vid. Pref. to Davis's Rep. The first after the Norman Conquest that was stiled Lord of Ireland.



Girald. Camb.  
Hibern. ex-  
pugnat.

Vid. Reflecti-  
ons upon a rea-  
sonable Opinion  
against signing  
the voluntary  
Association.

stiled *Conquestor*. Yet *Girald*, an Au-  
thor of that time, calls him, *Triumphator Hibernia*, which is tantamount  
to Conqueror. But since *Conquestor*, when first used, signified no more  
than one who came to a Right  
which he claimed not by *hereditary*  
*Descent* (according to which *W. 1.*  
acknowledged, that he was *made* or  
*created* King of the English by *here-*  
*ditary Right*, that is, as has elsewhere  
been shewn, and may be more at  
large, was duly let in to the Inheri-  
tance of the Crown) however the  
word *Conquestor* has been in follow-  
ing ages applied both to *W. 1.* and  
to *H. 2.* Let's consider a little,

1. Whether the English Nation  
ever submitted to *W. 1.* as a Con-  
queror, in a sense of larger significa-  
tion than 'twas antiently used.

2. Whether the Irish Nation  
submitted to *H. 2.* or to any other  
of our Kings, more absolutely than  
the English did to *W. 1.*

1. Mr. *Molineux* agrees, that *E. 3.*  
was the first that us'd the *Æra* of  
*post Conquestum*; which indeed was  
no more than to distinguish the *Ed-*

*wards*



wards after the time of *W. I.* from the three *Edwards* which reign'd in *England* before that time : but no body that I know of, has yet pretended that *W. I.* ever assumed the stile of *Conqueror* ; and I dare say, no one Author of that time, printed or in Manuscript, ascribes it to him. I must own in some of his Charters, he says, he gain'd the *Kingdom by the Sword, having subdued Harold and his Accomplices* : but besides that *Puffendorf's* Assertion is undeniable ; that *after a Prince is overcome in a just War, till the Subjects consent, the State of War continues ; and there is no Obligation nor Faith, and so no Dominion ; W. I.* did not come to civilize and subdue the People to Laws, but to turn out, 1<sup>st</sup>. An Usurper upon the Right of the People, upon whom he had imposed himself without any true Election, notwithstanding what several antient Authors have affirmed. And, 2<sup>dly</sup>. An Usurper upon the Right which *W. I.* had, by a full and a formal Election, he having been elected Successor in the life

*Puff. de Jure Gentium. VII. 7. 3.*

life time of the Confessor : which I may hereafter shew, with all the Circumstances, but shall at present refer only to three Authorities out of many.

Pictav. gesta  
W. Ducis  
Norm. & Re-  
gis Anglor.  
f. 181.

*William of Poitiers*, an Author who lived in the very time, informs us, that the Confessor sent an Embassy into *Normandy*, *suorum assensu*, by the assent of his People ; to assure him of the Succession.

Ord. Vital.  
f. 492.

And *Ordericus Vitalis* has these words.

Edwardus nimirum propinquo suo W. D. N. primo per Rodbertum Cant. summum Pontificem, postea per eundem Heraldum, integram Anglici regni mandaverat concessionem : ipsumque, concedentibus Anglis, fecerat totius juris sui hæredem.

Edward sent an Embassy to William Duke of Normandy, first by Robert Archbishop of Canterbury, afterwards by Harold himself, acquainting him with the entire Grant of the Kingdom of England : and had made him Heir of all his Right, with the Consent of the English.

Which shews in what sense *Ingulph*, who was Secretary to *W. 1.* is to be understood, when he says,  
That



Eum sibi succedere in regnum voce stabili sancivit. That the Confessor, with a stable Voice ordained, or appointed him to succeed him in his Kingdom.

'Tis not to be questioned, but *Inghulph* who was an *Anglo-saxon*, and well knew that a King could not dispose of the English Crown, without the consent of the *States of the Realm*; would be understood by this, that the *Confessor's voice*, or *nomination*, had a *Parliamentary Sanction*; when one of the *Norman* writers looks upon *Harold* as a \* *mad-man*, for not staying to see what a *publick Election* should determine.

\* Non expectabat vesanus Anglus quid publica electio statueret. Pic-tav. ut memini, vel Ordin. Vital.

That *W. I.* came only to turn out an Usurper, is not all: but having done this with a great force, the People of *England* would not receive him for King upon his Victory, till they had treated and agreed with him in a † *Convention* at *Berkhamstead*; where, as Authors concur, *fædus pepigit*, "he struck a "League with them; and was not only obliged to maintain the *Eng-*

† Flor. Wig. Fidelitat. iuraverunt, quibus & ipse fœdus pepigit. S. Du-nelm. F. 195. Hoveden. F. 258. Rad. de Diceto Col. 480. Bromton Col. 958.

lish



|| *Ordin. Vital.*  
F. 503.

Bib. Cotton.  
sub Effigie  
Claudii, A. 3.

\* Bib. Cot. sup.  
Volumus &  
concedimus.

Vid. Selden.  
Differt. ad  
Fletam de con-  
firmatione, 40  
Regni sui E-  
kal. vid. etiam  
Mat. Par.

Addit. de Fre-  
therico Ab.  
Sancti Albani,  
extorquente  
cautionem ju-  
ratoriam.

*lish Laws*, in virtue of a *mutual Contract*: but part of the *Contract* with the || *Prelats*, and the *Nobility of the Kingdom*, was, That he should be crown'd as the manner of the *English Government* requires. From those Authors who give the heads of his Oath, administred by *Alfred* Archbishop of York, 'tis plain, that he was crown'd according to the *standing Ritual* in use from the Coronation of King *Ethelred*, and continued to the Reign of *H. 1.* without any material alteration: And *Authors*, as well as the *Ritual*, shew, that the people were solemnly ask'd, *whether they would have him to reign over them?* to which they express their *consent*, in such terms as implied a \* *Grant*.

But the *Coronation Oath* being only in general terms; that King was obliged, once at least, if not oftner, to swear expressly, that they should enjoy the Benefit of the *Confessor's Laws*; that Digest of so much of the common Law of *England*, as was in his time thought necessary to be reduced to writing; to which some

some additions were made by that King in Parliament, for the benefit of the English.

That there was nothing like this, in the submission of the people of Ireland to H. 2. has appear'd above; and that he acted according to the import of his stile, of Lord of Ireland, in imposing Laws, and a King upon 'em.

And I would gladly know what Irish Laws and Customs he swore to maintain?

Tho, therefore, I am as averse to the common Notions of Conquest as this Gentleman, especially to the supposition, that God, "in giving  
 " one Prince a Conquest over ano-  
 " ther, THEREBY puts one in pos-  
 " session of the others Dominions,  
 " and makes the other's Subjects  
 " become his Subjects, or his Slaves,  
 " as they come in, upon conditions,  
 " or at the will of the Conqueror:  
 Yet I must desire Mr. M. to explain those Acts of Parliament made in Ireland, which not only seem to import, that the Crown and Kingdom of England, had made an absolute

*Vid. God's ways of disposing of Kingdoms. P. 20.*

*The sense of Parliaments in Ireland, in relation to Conquest.*



solute acquisition of the Land of Ireland, but use that scurvy word, *Conquest*.

Stat. Hib.

28 H. 8. c. 3.

An Act, 28 H. 8. recites, That the King's Land of Ireland, heretofore being inhabited, and *in due obedience unto the King's most noble Progenitors, Kings of England, who, in the right of the Crown of England, had great Possessions, Rents, and Profits within the same Land;* had grown into great ruin and desolation, for that *great Dominions, Lands, and Possessions, had by the King's Grants, course of Descents, and otherwise, come to Noblemen of England, by whose negligence the wild Irish got into possession; the Conquest, and winning whereof, in the beginning, not only cost the King's noble Progenitors, but also those to whom the Lands belong'd, charges inestimable:* and tho the King's English Subjects had valiantly opposed the Irish, yet upon their absenting themselves again out of Ireland, the Natives, from time to time, *usurped and encroached upon the King's Dominions;* and particular-



ly that the Earl of Kildare, with his accomplices, endeavour'd to take the Land of Ireland out of the King's possession, and his Heirs thereof for ever to disherit.

For these, and divers other hurts F. 65. and enormities, like to ensue to the Commonweal of the Island; in respect of the *inestimable Charges* which the King had sustained, and apparently had occasion to sustain for, and about *the conquest*, and *re-continuance* of the same, out of his Enemies possession; *tho the King had right to all the Lands and Possessions* there referr'd to, and tho he might justly insist upon the Arrears of two parts of the Land of those who had absented themselves, which might amount to more than the purchase of 'em; it vests in the King and his Heirs, *as in the Right of the Crown of England*, only the Lands of some particular persons.

The Statute of the Queen at- Stat. 11. Eliz. Sef. 3. c. 1. tainting Shane Oneile, speaks of populous, rich, and well-govern'd Regions, wealthy Subjects, beautiful Cities, and Towns, of which the Im-

D perial

*perial Crown of England had, before that time, been conveniently furnished, within the Realm of Ireland; which after being lost, had been recontinued to the Queen's quiet possession.*

But the Rebel, *Shane Oneile*, refusing the name of a Subject, and taking upon him, as it were, the Office of a Prince, had enterprized great *Stirs, Insurrections*, and horrible *Treasons*, against her Majesty, her Crown, and *Dignity*; imagining to deprive her Highness, her *Heirs* and *Successors*, from the real and actual possession of her *Kingdom of Ireland*, her true, just, and ancient *Inheritance* to her, by sundry *Descents*, and *authentick strong Titles*, rightfully and lawfully devolved.

And having mention'd a Title from *Gurmond* the Son of *Belin*, King of *Great Britain*, says,

F. 37.

“ Another Title is, as the Clerk  
 “ *Giraldus Cambrensis* writeth at  
 “ large, of the *History of the Con-*  
 “ *quest of Ireland*, by King *H. 2.*  
 “ your famous Progenitor.

The Title to the Land then recognized,



nized, was abundantly strengthened and confirmed by *Irish* Parliaments in the time of J. I. and since. In the Act of Recognition to J. I. they tell him, of his having quench'd the most dangerous and *universal Rebellion*, that ever was rais'd in that Kingdom; in the suppressing whereof, the *unreform'd parts of the Land*, which being rul'd by *Irish* Lords and Customs, had never before receiv'd the Laws and civil Government of England, were so broken and reduced to Obedience, that all the Inhabitants thereof did gladly submit themselves to his *Highness's ordinary laws and Magistrates*: which gave unto his Majesty a more entire, absolute, and actual possession, than ever any of his Progenitors had.

All Ireland being thus brought into subjection to the Crown and Laws of England; K. James taking notice of Laws which had been made \* *af-* \* 12, 13, 14, J. I. c. 5.  
*r the Conquest* of that Realm by his Progenitors Kings of England, to keep up the distinction between the *English* and the Natives of the *Irish* blood; that he had then taken 'em



all into his protection, and that they lived *under one Law, as dutiful Subjects* of their *Sovereign Lord and Monarch*, repeals those dividing Laws.

After this the *Irish* Parliament \* *granted C. 1. four Subsidies, rightly considering the vast, and almost infinite expence of Men, Mony, Victuals, and Arms, sent out of England thither, by the King and his Royal Progenitors, for reducing that Kingdom into the happy condition wherein it then stood.*

10 C. 1. Sef. 1.  
c. 3. and Sef. 3.  
c. 3.

And sutable to the import of the word *Conquest*, Acts of Parliament of that Kingdom, in the Reign of that King, shew that the Titles to Lands of the *English Plantation*, or which they from time to time gain'd from the *Irish*, were enjoy'd by Grant from the Crown: and for securing the Estates to *Undertakers, Servitors, Natives, and others*, all the Lands in several Counties, commonly call'd *Plantation Lands*, were vested in the King, his *Heirs* and *Successors*, in right of the *Imperial Crown* of *England* and *Ireland*.

Nota, But one  
Imperial  
Crown.

The Stat. 14 & 15 C. 2. holds the *Irish* Rebels to be subdued and conquer'd Enemies, and therefore vests all their Lands in the Crown of *England*, in order to make satisfaction to the *Protestant Adventurers*, for the reducing that Kingdom to its due obedience, and to enable the Crown to extend Grace to such as should be held deserving of it; Reprisals being first made to the Protestant Proprietors.

Tho, therefore, I am far from admiring the Lord *Coke's* reasoning in *Calvin's Case*; I may here subjoin part of Mr. *M's* reflection upon him, and refer him to the *Irish Acts of Parliament* to qualify his Censure of the *Ld Coke's* restriction of the Opinion in the *Tear-book*, 2 R. 2. that the *Irish* are not bound by Statutes made in *England*, because they have no *Knights of Parliament* here; which, says the Lord *Coke*, is to be understood, unless they be specially named. To this assertion Mr. *Molineux* admits he gives colour of reason, by saying, "That tho *Ireland* be a distinct Dominion from *England*, yet the Ti-

Non hic habent Milites Parliamenti.

P. 117.

D 3                      " cle



“ the thereof being by *Conquest*,  
 “ the same by *Judgment of Law*,  
 “ might by exprefs words be bound  
 “ by the Parliaments of *England*.

P. 117.

To confound the Lord Coke, I  
 “ would fain know, fays this Gentleman, what the Lord Coke means  
 “ by *Judgment of Law*: Whether  
 “ he means the Law of Nature and  
 “ Reason, or of Nations, or the  
 “ Civil Laws of our Common-  
 “ wealths? For answer to which  
 I need at present only ask him,  
 what fort of Law he takes the above-  
 cited Statutes of *Ireland* to be? and  
 fhall afterwards fhew that they  
 have all along fubmitted to fuch a  
 Conquest, or Acquisition, as gives a  
 Right to the imposing of Laws.

P. 118.  
 Of Mr. M's  
 comparison be-  
 tween Scot-  
 land and Ire-  
 land; and of the  
 Annexation of  
 Ireland to the  
 Crown of Eng-  
 land.

3. But fince he is pleas'd to fay, As  
*Scotland*, tho the King's Subjects,  
*claims an exemption from all Laws but*  
*what they affent to in Parliament; so*  
*we think this our Right also*: and  
 going upon the fupposition of *Ire-*  
*land*, being a Kingdom as diftinct  
 from *England* as *Scotland*, he frames  
 an Objection, that however they  
 may be restrain'd by War from do-  
 ing



ing what may be to the prejudice of *England*, the stronger Nation: If this may be, he asks, why does it not operate in the same manner between *England* and *Scotland*, and consequently in like manner draw after it *England's* binding *Scotland* by their Laws at *Westminster*? P. 147.

As to *Scotland*, not here to enter into the Dispute between the Lord *Coke* and the rest of the Judges, who resolv'd *Calvin's* Case, and the House of Commons of that time; nor yet, into the Question concerning the *Scotch* Homage, whether 'twas for the Kingdom of *Scotland*, or only for some Lands which their Kings held of the Crown of *England*: 'Tis enough to observe, that during the *Heptarchy* here we often had one King, who was *Rex primus*, to whom the others were *Homagers*, and obedient in the Wars for common Defence of the Island; yet each King had his distinct Regalities, and the Countrys their several Laws and Customs, and distinct Legislatures for Lands, and other Rights and Things within themselves.

This 'twas easy to conceive that *Scotland* had; and thus, both there and here, under the *Heptarchy*, the several Kingdoms, notwithstanding Homage to one King who had the *Primacy*, were under separate Allegiances, as the respective Subjects were not bound to the same Laws; tho the States of the Kingdom did Homage as well as the King. When the Right to the Crown of *Scotland* came afterwards in *J. 1.* to be in the same Person who had the Crown of *England*, and that without any new Acquisition by the Crown or Kingdom of *England*, there was (a) no merger of the less Crown: and 'tis certain that in the Judgment of Law, *Palatinates* fallen to the Crown continue distinct Royalties.

Vid. Ben. Ab.  
in Bib. Cot. de  
Homagio Re-  
gis Scot. H. 2.

(a) Vid. Answ.  
to C. J. Herbert  
on the dispen-  
sing Power;  
and particular-  
ly the Sheri-  
valty of the  
County of N.  
for which some  
have supposed  
that the Sta-  
tute in that  
case was dis-  
pensed with.  
A Comparison  
between Ire-  
land and  
Wales.

(b) Mr. M.  
p. 165.

But if, for the keeping a King-  
dom distinct, whether in the Per-  
son of the same King, or as an Ap-  
pendant to his Imperial Crown (b),  
a distinct Legislature is necessary as  
well as a distinct Jurisdiction; then  
*Wales*, which in many of our Sta-  
tutes is call'd a Dominion, was no di-



distinct Dominion, or Principality ;  
if it at any time continued in the  
Crown, without having Parliaments  
of their own, or being represented  
here, by Members of their own  
chusing : but thus it was with  
*Wales* from the 12<sup>th</sup> (c) of E. 1. to (c) 34 H. 8.  
the 34<sup>th</sup> of H. 8. in right of E. c. 13.

1<sup>st</sup>'s Conquest, as Sir *John Davis*, or the Judges in his time call  
the Acquisition of that Dominion ;  
and as 'tis there ; " E. 1. changed  
" their Laws and Customs as he  
" had express'd in his Charter, or  
" the Statute of *Rutland* which fol-  
" lows :

Divinâ providentiâ  
terram Walliæ cum  
incolis suis prius  
nobis jure feodali  
subjectam, in pro-  
prietatis nostræ do-  
minium totaliter &  
cum integritate con-  
vertit, & coronæ  
regni nostræ an-  
nexit.

*By the Divine Pro-* Davis's Rep.  
*vidence the Land of* f. 41. b.  
*Wales, with its In-*  
*habitants, before sub-*  
*ject to us by feudal*  
*Right, we have turn'd*  
*wholly and entirely*  
*into the Dominion of*  
*our Propriety, and an-*  
*nexed it to the Crown*  
*of our Kingdom.*

*Should be in  
the plural num-  
ber.*

And as to their Laws and Customs ;

Quas-



<p>Quasdam de consilio procerum regni nostri delevimus, quasdam permisimus, quasdam correximus, ac etiam quasdam alias adji- ciendas &amp; facien- das decrevimus.</p>	<p><i>Some, by the Coun- sel of the Peers of our Kingdom, we have abrogated, some we have permitted, some we have corrected, and besides some o- thers we have added and decreed to be put in execution.</i></p>
--	--

Here is a Title, understood at that time, of taking a Forfeiture for Rebellion against the Lord of the Fee ; and in consequence of this the King and his Peers, in Parliaments, took upon them to exercise a Legislative Power over *Wales*.

But notwithstanding that *Wales* was thus united and annexed to the Imperial Crown of *England*, and absolutely subjected to its Legisla- ture, yet, as is held in *Davis's* Re- ports, this Principality of *Wales*, not being govern'd by the common Law, was a Dominion by it self, and had its proper Laws and Cu- stoms.

That Report shews *Wales*, by reason of these different Laws and Customs,

Davis f. 67.  
le Case del  
County Pala-  
tine.

Customs, to be more distinct and separate from the Kingdom of *England*, than *Ireland* is; and that a Tenure of the Prince of *Wales* should not after its reduction under the Subjection of *England*, become a Tenure of the Crown in chief, but that it should be so in relation to Tenures of a County *Palatine* in *Ireland*, as well as *England*, because such a County in either Land was originally a parcel of the Realm, “ and derived from the Crown, and “ was always govern’d by the Law “ of *England*; and the Lands there “ were held by Services and Tenures, of which the common “ Law takes notice, altho the Lords “ have a separate Jurisdiction, and “ Seigniorie separate from the “ Crown. But that Tenure in Chief in *Ireland*, as well as *England*, could be no other than of the Crown of *England*, appears not only by the Grants to the *Electors Palatine*, or *Lords Marchers* of *Ireland*, but in that *Ireland* was not raised into a Kingdom till *H. 8*’s time.

F. 67.

The mention of *Palatinates* may well



*Comparison between Ireland and the County Palatine of Chester.*

well occasion a Comparison between the Land of *Ireland*, and the *County Palatine of Chester*, a distinct Royalty in the Principality of *Wales*: that had its Parliaments within it self, as 'tis very probable, from before the time of *W. 1.* it being certain, that *Hugh Lupus* enjoyed that Earldom by Judgment of the Lords, if not the Great Council in the time of *W. 1.* and their Parliaments may be traced from within the time of *H. 3.* downwards to their first having Representatives in Parliaments of the Kingdom, 34 *H. 8.*

Rot. Pat. 9.  
H. 3. m. 9. d.  
Rot. Pat. 44.  
H. 3. m. 1. d.  
Pat. 6. E. 1.  
m. 6. de 15ma  
in Com. Cestr.  
Pat. 20. E. 1.  
m. 6. de 15ma  
Regi, &c.

Their *provincial Parliaments* were chiefly, if not only, for the granting Aids to the Crown: but notwithstanding their being represented in Parliaments at home, yet Laws were made here in the superior Parliament, for the governing the Inhabitants of the County of *Chester*.

P. 148. Some object, that Ireland is to be look'd upon only as a Colony from England.

Now, without considering whether *Cheshire* was a Colony from *England*, or from *Wales*, or mix'd, or else a place exempt without regard to the being any Colony; I may well hold, that tho from before the time



time of *W. 1.* they had the privilege of being tax'd only by themselves, or with their own Consent : yet their Parliament was subordinate to the Great Council of the Kingdom of *England* ; and 'twas no violation of the Right of their Parliament, for the National Council to give them Laws for their better Government, and to restrain 'em from acting to the prejudice of the Crown and Kingdom of *England* : neither was this any diminution to the Prerogative of the Crown. The instance of *Chester* I may well bring to this point, being authorized by the Learned Judge *Shardlow* in the time of *E. 2.*

In an Action of Debt in the *King's-Bench* here, upon a Bond seal'd at *Chester*, that learned Judge says ; “ *Chester* is out of our Jurisdiction here, insomuch that there is not any Minister in that County answerable here for what he has done. Of a Deed done out of the Jurisdiction here, or out of the Realm, as at *Paris*, or elsewhere beyond Sea, I ought not  
“ to

*Year-book of*  
*E. 2. f. 613.*

“ to answer. The Counsel urges,  
 that “ *the Power here extends through-*  
 “ *out the Realm of England, and to*  
 “ *a Deed done within the Realm*  
 “ *of England you ought to answer ;*  
 “ *and Chester is within England.*

But *Shardlow* insists upon his former Judgment, and adds, “ I R E -  
 “ L A N D IS WITHIN THE REALM ;  
 “ and to a Deed committed there,  
 “ *I shall not answer here. Also Duresm*  
 “ *is within England, yet I shall not*  
 “ *answer at all here ; because the*  
 “ *Court cannot try the Fact if de-*  
 “ *nied.*

This shews plainly, that at that time *Ireland* was as much part of this Realm as *Chester* ; that the distinction of Jurisdictions was not for want of Superiority. This has been maintain'd over \* *Chester* and *Ireland*, by Writs of Error upon Judgments in Law. The reason of which is given by Chief † Justice *Vaughan*, that otherwise they may insensibly alter the Law appointed, or permitted, or give judgment to the lessening the Superiority.

\* 19 H. 6.  
 F. 12. b.  
 4. Inst. F. 212.

† *Vaughan's*  
*Rep.*



Mr. Molineux will have it, that

\* this removal of a Judgment from the *King's Bench* of Ireland, by Writ of Error, into the *King's Bench* of England, does not infer the subordination of Ireland to the Kingdom of England; but that this was a method appointed by an Act of Parliament of Ireland, which is lost among a great number of other Acts

*\* Of the Jurisdiction of the King's Bench of England over that of Ireland.*

P. 13.

*Vib. ib. the Lord Coke; seems to infer from the subordination, &c.*

which they want for the space of 130 years at one time, and 120 at another. 'Tis easily supposed by him, that they had Parliaments of their own for the most of those times; but others will believe that they were generally governed by the Laws of England, according to the Tenour of their submission to H. 2. and the interpretation then put upon that submission. But methinks the force of his Argument, in relation to the ordinary Jurisdictions the *King's Bench* of England exercises over that of Ireland, is not to be fear'd.

He is pleased to say, erroneous Judgments might have been removed from England into the *King's Court* in Ireland, for so certainly it must be

P. 13.

*Of the ordinary Jurisdiction of the K's Bench of England over that of Ireland.*



be since the Court travelled with the King. For which I need only mind him of his own quotation of  
 \* P. 164, 165. \* Sir Richard Pembrough's Case: according to which, for the King to have required the attendance there of the *Tenants in chief*, who were the Judges in his Court here, would have bin a banishment: But 'tis certain this could be no part of their Duty declared by the constitutions of *Clarendon*, 10 H. 2. in affirmance of the antient customs of the *Realm of England*, under that clause which requires 'em to be at the *Trials and Judgments of the King's Courts*.

Interesse judi-  
 ciis Curiae Re-  
 gis.

Besides, I shall shew, that the *King's Court* in *England* (which when not meant of the Parliament, did manifestly in those antient times relate either to a *Counsel chosen in Parliament*, and acting out of it by Authority from thence, or to the Body of the *Tenants in chief*, the *Great Lords*, for whose easing themselves of such troublesome attendances, the later Jurisdiction of the present *King's Bench* has sprung up) was possess'd of the Superiority of ordinary

ordinary Jurisdiction over *Ireland*, before Mr. *M.* can shew that they had any Acts made in *Ireland* of any kind, except that wherein they first gave themselves up to obey and depend on the *English Legislature*; and unless they can produce Acts of their Parliaments for raising Aids to the *Crown of England*.

In \* the 37<sup>th</sup> of *H. 3.* one *Baret* \* Rot. Claus.  
complain'd to the King of injustice 37 H. 3. m.  
done him by Justices itinerant at 4. d. Hibern.  
*Limbrick.*

Upon which the Justices of *Ireland* were commanded to send the Record before the King.

Where the Record was commanded hither, *per saltum*, without any regard to the *King's Bench* of *Ireland*.

And another Record in the same Year before *Shardlow*, and other Justices at *Dublin*, as I take it, of the *Common Pleas* there, was, by Writ of Error from hence, transmitted to the *Justice of Ireland*: Without which it seems he was then held to have no Authority to proceed in *Ireland*.

E

In

Et mandatum est Justiciariis Hiberniæ quod recorda cum omnibus administracionibus ad eam eo venire faciant.

Rot. Claus.  
37 H. 3. m. 15.



Recorda penes  
Remem. in  
scaccar. Placita  
coram Rege  
20 E. 1.  
Vid. inf. of  
Petitions in  
Parl. Temp.  
E. 1.

In the 20th of E. 1. a Writ of Error had removed out of *Ireland* a Record of a Judgment of Felony: Which, indeed, was remanded; not for want of Jurisdiction to correct the Error of the Judges in *Ireland*: But,

1. Because there was no notice to the King's Attorney General for *Ireland*: or at least, he did not attend.

2. Because 'twas a question of Fact.

Quia nullus venit ex parte Regis ad sequendum pro ipso, qui veritatem sciverit, ideo hæc non potest ad examinationem; set magis expedit domino Regi, quòd in partibus Hiberniæ, ubi felonix præd. perpetrari debent, examinentur, & modo debito terminentur.

*Because no body who may know the truth, comes of the part of the King to prosecute for him: Therefore this cannot proceed to examination: but 'tis expedient for the King, that the said Felonies should be examined, and duly determined in Ireland, where the said Felonies are supposed to have been committed.*

How-



However Mr. M. conceives it  
 “ manifest, that the *Jurisdiction* of  
 “ the *King’s Bench* in *England* over  
 “ a Judgment in the *King’s Bench*  
 “ of *Ireland*, dos not proceed from  
 “ any *subordination* of one King-  
 “ dom to the other; because the  
 “ Judges in *England* ought, and  
 “ always do judg according to the  
 “ Laws and Customs of *Ireland*,  
 “ and not according to the Laws  
 “ and Customs of *England*, any o-  
 “ therwise than as these may be of  
 force in *Ireland*. But,

P. 133.

P. 132.

i. ’Tis evident that the Judges  
 either will, nor can judg accord-  
 ing to any Law or Custom  
 of *Ireland*, which is contrary to  
 the Rules of our Law, or which  
 has not been allowed there as no  
 way prejudicial to the Law here:  
 according to his instance of a *De-*  
*claration for an Acre of Bog*, a word  
 not known in *England*; but well  
 enough understood in *Ireland*.  
 Which I may answer with a paral-  
 lel case lately adjudged in the *Ex-*  
*chequer of England*.

P. 133.

One having spoken scandalous *welsh words* in *Wales*, or in a part of *England* where the *Welsh Tongue* is used, was libel'd against in the Ecclesiastical Court there: Upon which the Court of *Exchequer* was moved for a Prohibition, because the Words were *insensible*, and of no signification: But no Prohibition was granted, because they were understood where they were spoken. And thus 'tis in relation to the particular Instances of Mannors, or inferiour Courts. Therefore,

2. By the same reason, that the judging according to the Law used in *Ireland* would imply, that there is no Subordination, 'twill follow that the Inferior Courts in *England* are not *subordinate* to the Courts of *Westminster-Hall*: and I may add, neither is the *King's Bench* of *England* *subordinate* to the House of Lords.

*The ordinary Jurisdiction of the Lords, and the King's Bench, an incident to the Superiority of the Crown of England.*

\* P. 3.

As to the question of their Jurisdiction, occasioned, as Mr. M<sup>r</sup> \* Margin has it, by the Case of the Bishop of *Derry*, I need say little here, referring him to the Judgment

ment of the *Lords*, and to that exercise of the Judicial Power, which I shall have an opportunity of shewing in the Reign of *E. 1.*

But as to his supposed *clear Argument* against the *subordination*, from the *Lords* doing nothing upon the Petition of the Prior of *Lan-*  
*thony*, who appeal'd to the Parliament of *England*, from a refusal of the *King's Bench* here to meddle with a Judgment which had pass'd in the Parliament of *Ireland*:

P. 125, 126.  
Rot. Parl.  
8 H. 6.

'Twill admit of several Answers;

1. This came not before the *Lords* by Writ of Error, or by Appeal from the *Lords* of *Ireland*; but was a complaint of the *King's Bench* here.

2. This was after the Charter which I shall afterwards shew, placing a judicial Power to some purposes in their *Parliaments*: But whether they exceeded that Authority, 'twas not for the *King's Bench* to judge, but for that Power from whence their Charter was derived.



3. This Petition seems either to have come too late, or to have been waved: for if it had fallen under consideration, 'tis probable that some Answer to it could have been endors'd, as was usual in former times.

*Of the Annexation of Ireland to the Crown of England.*

P. 41, 42.

P. 44.

But that the *ordinary Jurisdiction* both of the Lords in Parliament, and of the *King's-Bench* here, is but an incident to the Superiority of the Crown of *England*, will be much clearer than any thing Mr. M. has urged. And whatever Mr. M. conceives, the Annexation of *Ireland* to the Crown of *England*, will sufficiently manifest the *Subordination*; tho he, supposing that this was done by the Irish Statute, which annexes it as a Kingdom, with others which declare it annex'd as a *Land* or *Dominion* of a lower Character, conceives " little more is effected by " these Statutes, than that *Ireland* " shall not be aliened or separated " from the King of *England*, who " cannot hereby dispose of it, other- " wise than in legal Succession a- " long with *England*; and that " who-

“ whoever is King of England, is  
 “ *ipso facto* King of Ireland.

But if these Statutes, bating the name of Kingdom (which the Parliament of *England* afterwards gave them) are only declaratory of the antient Right of the Crown of *England*; then I may well hold, that there is not so much effected by these Statutes, as he yields, it being only the operation of Law. And if by operation of Law a King of *England*, tho not succeeding by a strict Right of Descent, but by the Choice or Declaration of the States of this Realm is *ipso facto* King or Lord of *Ireland*, I would gladly know how that Kingdom or Land, which he owns to be thus inseparably annex'd to the Imperial Crown of *England*, can be a compleat Kingdom? And since he is pleas'd to ask, whether *multitudes of Acts of Parliament, both of England and Ireland, have not declared Ireland a compleat Kingdom?* and whether 'tis not stiled in them all, *the Kingdom or Realm of Ireland?*

P. 127.  
 P. 149.  
 Vid. Davis  
 Rep. f. 61. citing 28 H. 8.  
 c. 2. La corone d'engleterre en plusors autres Acts de Parl. est appendel. Imperial Crown, & la corone de Ireland est appendant, a ceo 28 H. 8. c. 20. & unite & knit al. Imperial corone D'engleterre, 33 H. 1. c. 1.

I would entreat the favour of him, to shew me one Act of Parliament of either Kingdom, which says, or all Circumstances consider'd implies, that *Ireland* is a compleat Kingdom: or that ever any Parliament of their own held it to be advanced to the Dignity of a Kingdom, before 33 H. 8. tho, as they acknowledg, the Kings of *England* had Kingly Power there long before.

33 H. 8. c. 1.

I must own, that as the name of *King* was in *H. 8's* time thought requisite to charm the *wild Irish* into Obedience; so in Queen (a) *Elizabeth's* time, *Imperial Crown* was thought to make a conquering Sound: but this was never ascribed to it by any Parliament of *England*; nor, that I can find, even of *Ireland*, before her Reign or since.

(a) 2 Eliz.c.1,  
& c. 2.

But the one *Imperial Crown*, upon which *Ireland* has been, and still is, dependent, is the Crown of *England*: for this the Statute of *Ireland*, before that was made a Kingdom, is exprefs, having these words;

“ Call-



“ Calling to our remembrance the 28 H. 8. c. 2.

“ great Divisions which in time  
“ past have been, by reason of several  
“ Titles pretended to the Imperial Crown of the Realm of *England*, whereunto this your Land of *Ireland* is appending, and belonging.

So another in the same Year.

“ Forasmuch as this Land of *Ireland* 28 H. 8. c. 5.

“ *land* is depending, and belonging,  
“ justly and rightfully to the Imperial Crown of *England*; it enacts, that the King, his Heirs and Successors, Kings of the Realm of *England*, and Lords of this said Land of *Ireland*, shall have and enjoy, *annexed and united to the Imperial Crown of England*, all Honours, Dignities, Pre-eminencies and Authorities, &c. belonging to the Church of *Ireland*.

If Mr. *Molineux* observes duly, *Ireland* has all these Imperial Rights declared in the Irish Statute, 33 H. 8. c. 1. but I cannot find by what Rule he infers this from an Act of Parliament, which is express, that the King of *England* shall have the  
Name,

P. 166.

Name, Stile, Title and Honour of King of *Ireland*, with all manner of Preheminiencies, &c. as united and knit to the Imperial Crown of the Realm of *England*.

Indeed it shews, that under the name of *Lord*, the King had the same Authority ; but the name of *King* was thought likely to be more prevalent with the Irish Men, and Inhabitants within that Realm.

11 Jac. I. C. I. The Statute, 11 Jac. I. declares him King of *England*, *Scotland*, *France*, and *Ireland*, by God's Goodness, and Right of Descent under one Imperial Crown.

10 C. I. Sess. 3. And the Statute, 10 C. I. calls this the Imperial Crown of *England* and *Ireland* : And indeed Mr. *Molineux* would do well to shew that ever any of our Kings took any Coronation Oath for *Ireland*, otherwise than as Kings of *England*.

And yet I know not what he may do when his hand's in ; since he has the Art to transubstantiate their Recital of an Act of Parliament in *England*, which declares that  
Popes

Popes had usurped an Authority in derogation of the Right of the Imperial Crown of the Realm of *England*; recognizing no Superiour under God but only the King, and being free from Subjection to any Man's Laws, but only such as have been devised, made and ordain'd within the Realm of *England*; or to such other as, by sufferance of the King and his Progenitors, the People of the Realm of *England* had taken at their free Liberty, by their own Consent, to be used among them, and have bound themselves by long Custom to the observance of the same; To infer that 'tis thus with *Ireland*, because the enacting part of that Statute which has this Recital is promulged for a Law in *Ireland*, is to suppose *Ireland* to be turned into *England*; and that the Commissioners, who are by virtue of that Act and the Great Seal, to exercise that Ecclesiastical Jurisdiction which the Statute in *England* placed in the See of *Canterbury*, are become English Archbishops.

Q. Whether of *England* or *Ireland*, neither being named.

And



And with the like way of reasoning he would infer, that Acts of Recognition in England are of no Force in Ireland, till the Irish have recognized the same King; and yet confesses, “ That whoever is King

P. 55.

“ of England is *ipso facto* King of Ireland, and the Subjects are obliged to obey him as their Leige

P. 127.

“ Lord: That they in Ireland are so annexed to England, that the Kings and Queens of England are by undoubted Right *ipso facto* Kings and Queens of Ireland. To

P. 157.

use Mr. M's own Expression, *I am sure there's an end of all Speech*, if he does not confess, that a Prince rightfully possessor of the English Throne, is thereby King of Ireland, before any Recognition made by a Parliament there: and yet notwithstanding this generous Concession, he immediately subjoins;

P. 127.

“ And from hence we may reasonably conclude, that if any Acts of Parliament made in England should be of force in Ireland, before they are receiv'd there in Parliament, they should be more  
“ espe-

“ especially such Acts as relate to  
 “ the Succession and Settlement of  
 “ the Crown, and, Recognition of  
 “ the King’s Title thereto, and the  
 “ Power and Jurisdiction of the  
 “ King. And yet we find in the  
 “ Irish Statutes, 28 H. 8. c. 2. *An*  
 “ *Act for the Succession of the King,*  
 “ *and Queen Ann.* And another,  
 “ c. 5. declaring the *King to be su-*  
 “ *preme Head of the Church of Ire-*  
 “ *land.* Both which Acts had for-  
 “ merly pass’d in the Parliament of  
 “ *England.* So likewise we find  
 “ amongst the Irish Statutes, Acts  
 “ of Recognition of the King’s Ti-  
 “ tle to *Ireland* in the Reigns of  
 “ *H. 8. Queen Elizabeth, King*  
 “ *Charles 2. K. William and Q. Ma-*  
 “ *ry:* by which it appears, *that Ire-*  
 “ *land, tho annexed to the Crown of*  
 “ *England, has always been look’d*  
 “ *upon to be a Kingdom compleat*  
 “ *within it self, and to have all Ju-*  
 “ *risdiction to an absolute Kingdom,*  
 “ *belonging, and subordinate to no*  
 “ *Legislative Authority on Earth.*  
 “ Tho ’tis to be noted, those Eng-  
 “ lish Acts relating to the Suc-  
 “ cession

P. 128.

“ cession and Recognition of the  
 “ King’s Title, do particularly  
 “ name *Ireland*.

Before I enter into the enquiry how this can be made consistent with a Kingship *ipso facto* before the Recognition in *Ireland*; ’twill be requisite to inform him, that we have had Settlements of the Crown by Acts of Parliament here, which never were formally received by any Parliament in *Ireland*; and yet such Act of Parliament here has ever been held to bind *Ireland*, tho’ twas not expressly named; and that tho’ the Settlement has carried the Crown from the elder Branch of the Royal Family: for instance, 7 H. 4. at the request of the Lords and Commons in Parliament, ’twas

Vid. the printed Statute-Book ending with R. 3. and Reflections upon a treasonable Opinion against signing the Association.

enacted, “ That the Inheritance  
 “ of the Crown and of the Realms  
 “ of *England* and *France*, and of  
 “ all other the King’s *Seigniories*  
 “ or Lordships beyond Sea, with  
 “ the appurtenances, be put and  
 “ remain in the Person of the said  
 “ King, and the Heirs of his Body  
 “ issuing; and ’twas ordain’d, esta-  
 “ blished,



‘ blished, pronounced, expressed,  
 ‘ and declared, that Prince *Henry*,  
 ‘ the King’s eldest Son, *be Heir ap-*  
 ‘ *parent*, to succeed him in the  
 ‘ said *Crown*, Realms, and Seignio-  
 ‘ ries; to have them with all their  
 ‘ Appurtenances, after the King’s  
 ‘ decease to the Prince and the  
 ‘ Heirs of his Body; with Re-  
 ‘ mainders over, to the King’s 2<sup>d</sup>  
 ‘ and 3<sup>d</sup> Sons, and the Heirs of  
 ‘ their respective Bodies succes-  
 ‘ sively.

And according to this Form 1 *H.* In the beginning  
 of the Statutes  
 of H. 7. in  
 French.  
 “ ’twas ordain’d, establiſhed, and  
 enacted, by Authority of Parlia-  
 ment, that the Inheritances of  
 the Crowns of the Realms of  
*England* and *France*, with all the  
 preheminance and dignity Royal  
 to the ſame appertaining, and  
 all other *Seigniories* belonging to  
 the King beyond Sea, with the  
 Appurtenances in any manner  
 due to them, or appertaining, do  
 ſtand and remain in the moſt no-  
 ble Perſon of their ſaid Sovereign  
 Lord *H. 7.* and the Heirs of his  
 Body lawfully iſſuing for ever,  
 “ with

“ with the Grace of God to endure,  
 “ and in no other Persons.

Not to trouble Mr. M. with an enquiry, whether these, or any other Acts of Parliament in *England* of former Reigns, united *Ireland* to *England*, otherwise than as they declared their intention for that Seignior, or Dominion, to go along with the Government of *England*; or what Act of Parliament in *Ireland*, since the first submission to H. 2. created an Annexation of the Land of *Ireland* to the Crown of *England*; I must entreat him to explain,

How it should come to pass, that the King of *England*, *ipso facto*, by his being made King here, is King of *Ireland*; and yet that those Acts of Parliament here, by which the King is declared King, without and against a strict course of descent, are of no force till the King is recognized by Act of Parliament in *Ireland*?

P. 127.

If a King of *England*, as such, is *ipso facto* King of *Ireland*, is he not so before any Act of Recognition there? And if so, what can that,

that, or other Acts repeating the Laws made in *England*, signify more, than a full publication of what was the Law before?

If the *Election*, or Declaration of a King, by a Parliament in *England*, gives a Law in this matter to *Ireland*; and such a King is to be obey'd by virtue of that Law, *ipso facto*, before he is received and acknowledged by a Parliament in *Ireland*; do their subsequent Recognitions in the least inter that *Ireland* is a *compleat Kingdom*?

Is it any better than a Contradiction to hold, that a King of *England*, as created or declared in a Parliament of *England*, is thereby, or at the same instant, King of *Ireland*; and yet that *Ireland* is a Kingdom so compleat in it self, that he is no King till the Act of Parliament creating or declaring him King, is confirm'd by a Parliament in *Ireland*? Or take it the other way;

No Act of Parliament in *England* is of any force till confirmed in *Ireland*; and yet a King declared by a Parliament of *England*, tho he was not

F

King

P. 128.



King before such declaration, is thereby, or *ipso facto*, King of Ireland: that is, an Act of Parliament of England is not of force in Ireland till confirm'd there; and yet 'tis of force *ipso facto* by the being enacted here.

Does it not therefore follow, that such an annexation of Ireland to the Crown of England, as makes the King of England, *ipso facto* King of Ireland, destroys the supposition that their Parliaments have Authority to confirm or reject Laws made by the Legislature in England? Or otherwise, that the supposition of such an Authority in the Parliament of Ireland, destroys that annexation which Mr. M. himself yields?

Further yet 'twill appear, that, even after a Parliament of Ireland had, as far as it could, annex'd that Land, as a Kingdom, to the Imperial Crown of England; an Annexation here was requisite, for the ratifying what had been done in Ireland.

Stat. 34 & 35  
H. 8. c. 3.

Therefore, 34 and 35 H. 8. an Act was made by the Parliament of England, for ratification of the King's Majesty's Stile; by the King, with

with the assent of the Lords Spiritual, and Temporal, and the Commons in that Parliament assembled, and by the Authority of the same, enacting that all and singular his Grace's Subjects, and Resiants, of or within this his Realm of England, Ireland, and elsewhere, with other his Majesty's Dominions, from thenceforth accept and take the King's Stile, in manner and form following.

“ H. 8. by the Grace of God, King  
“ of England, France, and Ireland,  
“ Defender of the Faith, and of the  
“ Church of England, and also of Ire-  
“ land, in Earth the *supream Head*.

And 'tis enacted, that the said stile shall be from thenceforth, by the Authority aforesaid, united, and annexed, to the Imperial Crown of his Highness's Realm of England.

This related to all Ecclesiastical Power, as well as Civil, in Ireland, as well as England : In pursuance of this the Statute 1 Eliz. for the ex- 1 Eliz. c. 1.

tinguishing all *usurped*, and Foreign Power, and Authority, Spiritual and Temporal, which had been used *with- in this Realm*, or any other her Maje-

*ty's Dominions, or Countries, en-acts, That no Foreign Prince, or Prelat, shall enjoy any Power, Jurisdiction, Superiority, Authority, or Privilege, Spiritual, or Ecclesiastical, within this Realm, or within any other her Majesty's Dominions, or Countries; but that such Power, &c. shall be abolished out of this Realm, and all other her Highness's Dominions: And that all Power of visiting and correcting for Heresies & Schism, &c. shall for ever, by Authority of that Parliament, be united and annexed to the Imperial Crown of this Realm: Ecclesiastics were to swear that they would maintain all such Jurisdiction, Privileges, Preeminence and Authority, as granted or belonging to the Queen's Highness, her Heirs and Successors, or united to the Imperial Crown of the Realm. And the Queen is impowred to issue out Commissions for the executing that Act.*

This Statute bound Ireland, by plain intention, as that 34 and 35 H. 8. did in exprefs words. But Mr. M. will have it a mighty Argument, that this was of no force in



in *Ireland*, till received by a Parliament there : because after it had bin repealed in *England* by one Act, and another since the *Revolution* has declared such Commissions to be illegal ; yet the *Chancellor*, and others in *Ireland*, have held it to be still in force there. But,

1. He ought to have shewn that the Statute here, repealing so much of the Statute of the *Queen* ; as plainly exprest an intention, that no such Commission should be granted in *Ireland*, as the Statute of the Queen did, that *Ireland* should be subject to the same *Ecclesiastical Authority*, and in the same manner that *England* was : nor is it to any purpose for him to cite the Declarations in the late Statute of the illegality of such Commissions ; unless that Act had damn'd such Commissions, not only as being contrary to the Act of Repeal, but not to be warranted by the *Statute* of the *Queen* : but then this would have condemned the Resolution which he cites, of the Authority of such Commissions still in *Ireland*.

2. Admit Mr. M. should prove, that the Statute made in *England*, taking away the Authority of such *Ecclesiastical Commissions* here, as plainly intended to reach *Ireland*, 'twill afterwards appear, that unless Mr. M. shew, that this Act had been *transmitted* to *Ireland*, under the Great Seal of *England*; the supposition that such Commissions may still be legally executed in *Ireland*, will not in the least derogate from the Authority of the Parliament of *England*.

*The Power of  
England not  
departed from,  
but duly exer-  
cised.*

3dly, But how contrary his supposal of an independent Authority in the Parliament of *Ireland*, is not only to the Laws of reasoning, but the Authorities of all times, from *H. 2.* downwards, has already appeared in some measure; and may farther by some Authorities out of many, which will manifest, that the Rights of the *Crown* of *England* to impose Laws upon *Ireland*, by virtue of prior *submissions* and *consent*, is so far from being departed from, that 'tis strengthened and confirmed, by long exercise and submission to it.

Mr.

Mr. M. considering the State of P. 57 & 58.  
the Statute-Laws of England, under  
H. 2. King John, and H. 3. agrees,  
That “ *by the Irish voluntary sub-*  
“ *mission to, and acceptance of the*  
“ *Laws of England, we must repute*  
“ *them to have submitted themselves*  
“ *to these likewise, till a regular Le-*  
“ *gislation was established among them,*  
“ *in pursuance of that voluntary sub-*  
“ *mission, and voluntary acceptance.*

Yet he soon forgets this Concessi- P. 62.  
on, and would have it, that the  
men of Ireland were not bound by  
new Laws, but that the Grants of  
Liberties from Edward the Confes-  
sor’s time, down to H. 3. were only  
declaratory Laws, and confirmations  
one of another; and that thus Ireland P. 63.  
came to be govern’d by one and the  
same common Law with England.

I must confess I could not but smile  
at his Marginal Note upon the pro-  
ceedings of the Parliament at Ox-  
ford in the Reign of H. 2. by this P. 40.  
Ireland made an absolute separate  
Kingdom: And in the Body of his  
Book he says, “ *We shall observe that*  
“ *by this donation of the Kingdom of*  
F 4 “ Ire-



“ Ireland to King John, Ireland was  
 “ most eminently set apart again as a  
 “ separate and distinct Kingdom by it  
 “ self, from the Kingdom of Eng-  
 “ land; and did so continue until the  
 “ Kingdom of England descended  
 “ and came unto King John.

But to help him to understand this matter, I shall mind him of another passage in *Hen. II's* Reign. As he placed his Son *John* in *Ireland*, he, to secure the Succession of the *Imperial Crown* of *England* to his eldest Son *Henry*, caused him, in a \* *Parliament*, to be chosen and made King of *England*, while *Henry* the Father was alive.

\* Vid. Bened.  
 Ab. in Bib.  
 Cott. & al.  
 Author.

Now, did the Father by this, separate *England* from his own Jurisdiction? No, certainly; and indeed, in the Oath to the Son, and the homage perform'd, both at the Coronation and afterwards, by the King of *Scots*, there was a particular saving of the *Allegiance* and *Homage* due to the Father.

Thus both *Hoveden* and *Bromton* shew that 'twas, in relation to the constituting *John* King of *Ireland*,

as

as they call him : they are exprefs, that they to whom the Lands of *Ireland* were distributed, in that very *Parliament* which gave *John* his Office and Authority, were sworn to the Father and the Son. And Mr. *M.* might have observ'd, that a Charter pass'd in that Parliament, and cited by Sir *John Davis*, grants Davis Rep. F. 64. b. to *Hugh de Lacy* large Territories in the County of *Methe*, to hold of *H. 2.* and his Heirs. Whereas if *Ireland* had been given, as Mr. *M.* will have it, to *John*, and that thereby 'twas made in absolute Kingdom, separate and wholly independent on England; The Tenure must have been of *John* and his Heirs. \* The Oath of Allegiance, \* Vid. leges W. 1. de fide, &c. Regi domino suo. which in those days used to have no mention of Heirs, was to *H. 2.* as King of *England*, and went along with the Crown; but the Tenure reserved, was expressly to the Heirs of *H. 2.* which must relate to the legal Successors to the Crown of *England*; since as King he could have no other Heir.

But as this may manifest, that the Parliament which made *John* King of



\* Vid. Sandford's *Genealogical Hist.* referring to a *Charter in the Cotton Library.*

Sigillum Johannis filii Regis, domini Hiberniæ.

P. 41.

of *Ireland*, design'd him no more than a subordinate and vicarious Authority; 'tis plain he himself did not think he had more: in the Seal which he used, he stiled himself *Son \* of the King, Lord, or who is Lord, of Ireland.* Nor is there the least footstep of any Coronation Oath taken by *John* as King of *Ireland*; or that he ever wore an *Irish Crown.*

Notwithstanding that share in the Government of *Ireland* which *John* had in his Father's life-time; *Ireland* upon the Father's death fell

Vid. *Sandford*, sup.

\* *Polidore Virg.*

f. 255. Habito concilio, &c.

de concilii sententia honoribus atq; fortune privatus.

Thorn. int. decem. script. col. 1868. Fuit citatus, accusatus, & judicio coram paribus suis per eos legitimè tanquam proditor condemnatus.

*Mat. Par. Ad-*

*dit.* f. 281.

to *R. 1.* and the Archbishop of *Dublin* was assisting at his first Coronation, before he went to the Holy War: Nor did *John* ever pretend to be King of *Ireland*, while *R. 1.* lived, more than of *England*; which having attempted, while his Brother was in Foreign parts far remote; upon his Brother's return, he was, by \* Parliament, deprived of all his *Honours*, and *Fortune*: And thus, at least, he lost his suppos'd Royalty of *Ireland*, if it did not expire upon the death of *H. 2.* and this



This shews how rightly *Polidore* judged, (b) Ib. F.236. Oxoniam profectus, &c.  
 in calling him (b) *Regulus*, or *Viceroy*. Johannem fil. totius Hiberniæ regulum facit.

I will therefore admit Mr. *M*'s supposal, that *R. 1.* (c) had not died without Issue, but *his Progeny* had sat on the Throne of England, in a continued succession to this day; but cannot admit the o- (c) P.41,42.

ther part of his supposal, that the same had been in relation to the Throne of Ireland; since *John* never had such Throne, either before he was King of England, nor after: and therefore I may well conclude, that the subordination of Ireland to the Parliament, or even to the King of England, need not arise from any thing that followed after the descent of England to King *John*. Nor indeed was *John* King, either of England or Ireland, by descent; but that Election of the States of the Kingdom of England, which made him their King, preferring him before *Arthur* an elder Brother's son, drew after it the Lordship of Ireland, is an Appendant to the Crown of England: And however, if *H. 2.* had not sufficiently brought the Irish under the English Laws, *John* did after he came to be King of England.

In the 9th of his Reign, he (a) imposed Laws upon them in a Parliament of England; not indeed without the desire and counsel of such English Lords who had Lands in Ireland; but then their consent would

(a) Rot. Pat. 9. J.p.1.m. 2.n.8. Ad voluntatem & consilium dilector. & fidelium nostrorum. Com. W. Marefc. & Walt. de Lacey & al. Bar. nostrorum Hiberniæ, qui nobiscum fuerunt in Angl. & per consilium fidelium nostrorum in Angl. Quod latrones Hibern. expellantur de terra nostrâ Hiberniæ &c.

(b) Annales de  
Margan. Ann.  
1210. Jo. II.  
f. 14. Hostibus  
ex voto subac-  
tis.

(c) Vid. ib. de  
Lacy Com.  
ultorum W.  
de Breusa Walt.  
de Lacy, &c.  
Fecit confisca-  
ri omnia bona  
proscriptorum  
Principium  
quæ multa fu-  
erunt in Angl.  
in Wal. &  
Hibernia.

\* Pat. 30. H. 3.  
m. 1. Quod  
omnes leges  
& consuetudi-  
nes quæ in  
Regno Angl.  
tenentur, in  
Hibern. tene-  
antur, &  
eadem ter.  
eisdem legi-  
bus subjaceat,  
& per eandem  
regatur, sicut  
dominus R. J.  
cum ultimo  
esset in Hibern.  
statuit & fieri  
mandavit.  
† P. 58.

would have been involved in the consen-  
of the majority here, tho those Lord  
should have expressly dissented: But th  
Authority was derived from the consen  
of the King's *faithful People*, which i  
mentioned as distinct from the desire o  
*petition*, which occasioned the Law the  
made in a Parliament of *England*; for th  
expelling Thieves and Robbers out o  
the King's Land of *Ireland*.

For the effectual execution of this Act  
of Parliament, King *John's Expedition*  
seems to have been undertaken the nex  
year, when he (b) entirely *subdu'd hi*  
*Enemies*; and (c) confiscated the Estate  
of some of the English great Men in *Ire*  
*land*: Which Confiscation seems to have  
been after his return to *England*; bu  
before that, or at some other time in  
his Reign, he made a Law in *Ireland*  
which he *commanded to be observed there*.  
That \* *all the Laws and Customs which are*  
*in force in England, should be in force in*  
*Ireland; and that Land be subject to the*  
*same Laws, and be govern'd by them*. This  
was before any pretence to their having  
any Charter for a Parliament, other  
than the supposed sending over the *mo*  
*dus tenendi Parl.* by *H. 2.* and is before  
the time that Mr. *M.* † takes a *regular Le-*  
*gislation* to have been *established* among  
them: Therefore according to himself,  
*we must repute them to have submitted, not*  
only



only to such Laws as had before that time been made in Parliaments of *England*, but such as should be made, till they of *Ireland* should have the establishment of a *regular Legislature*.

However Mr. *M.* will have it, that *John* gave Laws to *Ireland*, \* *not as King* \* P. 54. of *England*, but as *Lord of Ireland*; and forms a pretty sort of an *Argument* from the stile of *Lord of Ireland*: as if this were an *Argument*, that 'tis not dependent upon the Crown of *England*; so excellent a faculty has he of making contraries serve his purpose. But 'tis very unlucky, that *John's* retaining this stile is not only an *Argument* that *Ireland* is a *Dominion*, or *Land*, appendant to the Crown of *England*; but that *John* was never *King* † of *Ireland*, which he would certainly have kept up as a distinct Interest, if he ever had such a Title separate from the Crown of *England*.

† Vid. Rot. Carr.  
16. Johannis.  
Rex Angliæ,  
Dominus Hibern.  
Dux Norm. & Aquitanix,  
Comes Audegav.

*H. 3.* being made *K. of England* by the like choice of the *States*, which preferr'd him before *Arthur's* Sister, as they did *John* before the Brother; in concurrence with these *States*, truly acted as *Lord of Ireland*, as might be shewn by numerous Instances.

In the 18th of his Reign, upon matters signified to him out of *Ireland*, he summoned the *Archbishops, Bishops, Earls, Barons*, Rot. claus. 18 H. 3. m. 27.



|| Regni nostri  
Angl.

† Rot. Pat. 21  
H. 3. m. 10.

\* Ad tractan-  
dum nobiscum  
ibidem super  
his & aliis  
statum nos-  
trum, & terræ  
nostræ Hiber-  
næ tangen-  
tibus.

† Rot. Claus.  
37 H. 3. m. 15.

Firmiter ad fi-  
dem & serviti-  
um nostræ & præ-  
decessor. nos-  
trorum Re-  
gum Angl. ad  
conquestum  
una cum Ang-  
licis faciend.  
super Hiber-  
nienfes.

(a) Vid. Sir  
John Davis de  
Tanistry.

(b) 41 H. 3.  
m. 11.

(c) Dudum.

(d) Multis re-  
troactis tem-  
poribus, which  
Mr. Pryn by  
mistake has  
omnibus.

*Barons*, and all the great *Men*, or *Nobi-*  
*lity* of the Kingdom of *England*, to || a  
Parliament at *London*, to treat about  
the State of his Kingdom, and of his  
Land of *Ireland*.

And in the 21<sup>st</sup> of his Reign, he sends  
a Writ to the Archbishops and others  
\* of *Ireland*, acquainting them that by  
the common consent of the *Archbishops*,  
*Bishops*, *Abbots*, *Earls*, and *Barons* of the  
Kingdom of *England*, alterations of the  
Law of *England* were enacted, as to the  
Limitations of several Writs ; which  
were then required to be observed in  
*Ireland*, in pursuance of the Statute of  
*Merton*.

In † the 37<sup>th</sup> of his Reign, an Irish man  
having pleaded, that he and his Brother,  
and their Ancestors, had always bin faith-  
ful to the Kings of *England*, his Prede-  
cessors, and served them in the CONQUEST  
OF THE IRISH ; they are, by peculiar li-  
cence under the Great Seal of *England*,  
admitted to enjoy by descent, as English-  
men. Which was an alteration of the  
(a) Law, and Custom of *Ireland*, as to  
those particular Persons, without any  
Act of Parliament there.

Indeed, but four years after 'tis (b) re-  
corded, that 'twas (c) long before, and  
(d) many Ages past ; which must reach  
beyond the Expedition of H. 2. provided  
and

nd yielded, by the *assent* and *desire* of the  
*relats*, and *great Men* of the *Land* of  
*Ireland*, that they should be bound by  
the Laws us'd in the Kingdom of *Eng-*  
*land*: Yet the same Record restrains this  
to the *consent* of only the (e) *English* of (e) *Omnibus*  
the *Land* of *Ireland*. However 'tis be- *Anglicis terræ*  
ond dispute that the English Laws, both *Hibern.*  
ade and to be made in *England*, were  
en held to reach as far as the English  
terest in the *Land* of *Ireland*: and this,  
cording to the Record 18 *H. 2.* above \* *Rot. Pat.*  
ferr'd to, was provided *de communi* 18 *H. 3. sup.*  
*consilio Regis*, by the *King's Common* *Rex vult ut*  
*council*: tho by what Council, it must *de communi*  
ve been *provided*, will more fully ap- *consilio Regis*  
ar afterwards, I may here explain *provisum est*  
by an Instance in that Reign. *quod omnes*  
*leges, &c.*

All must agree, that the Provisions of  
*xford*, in the 43<sup>d</sup> of *H. 3.* and referr'd  
in the Records of the next year,  
ere made in as true a Parliament as a-  
in that Reign before the 49<sup>th</sup>: 'tis  
ll'd a (g) *Parliament* by good Authors, (g) *Annales*  
d the word is used in the Records of (a) *Monast. Bur-*  
e next (a) year, in relation to a meet- *ton. f. 411.*  
g on the Borders of *Wales*. The (b) *Annales*  
(b) *Ordinances* and *Provisions* made at Ox- *Burton, sup. In*  
d, were drawn up by 12 chosen by *ead. Parl. apud*  
e King, and 12 by the *Commons*; *Oxon. xxiv.*  
ncerning which the Record has these *electi, viz.*  
ords, *xii. ex parte*  
*domini Regis,*  
*& totidem ex*  
*parte commu-*

Anno nitatis.



Rot. Claus.

44 H. 3. m. 18.  
dorfo.

Anno ab incarnat.  
domini 1259. Reg-  
ni autem H. Regis  
fil. Regis J. 43. in  
quindena St. Mic.  
conven. ipsi domino  
Rege & magnatibus  
suis, de communi  
consilio & consensu  
dictor. Regis &  
magnatum, factæ  
sunt provisiones  
per ipsos Regem  
& Magnates.

In the year from the  
incarnation of our  
Lord 1259. but of the  
Reign of K. Henry,  
Son of K. John, the  
43d, the said King  
and his great Men,  
being assembled in  
the Quinzism of St.  
Michael, Provisions  
were made by the  
Common Council, and  
consent of the said  
King, and great men

(c) Rot. Claus.  
44 H. 3. dorfo.  
m. 18.

(d) Ibid.

And yet some of the Entries in the  
same Roll, mentioning Provisions there  
made, are, (c) *per magnates nostros qui  
sunt de consilio nostro*, "By our great  
Men of our Council. Others, (d) *Per  
magnates de Consilio meo*, "By the great  
Men of our Council. As if 'twas by  
the sole Authority of the King, and  
such noble Men as were of his Privy or  
Private Council; when those Provisions  
were certainly made in full Parliament  
and this was the Council from whence  
Ireland then receiv'd its Laws.

Object.

P. 45.

However from a Charter in the first  
of that King's Reign, Mr. M. would in-  
fer, that the *English* there had their in-  
dependent Parliaments then established, or  
confirmed, tho he afterwards admits  
that during that King's Reign they  
might



might have been bound by Laws made here for want of a *(a)* regular *(a)* P. 58. legislature establish'd amongst them.

The *(b)* Charter, or rather Writ *(b)* P. 47. with which a Charter was sent, Pat. 1. H. 3. m. 13. incus. runs thus.

Rex Archiepisc.  
Episc. Abbatibus,  
Comitibus, Baroni-  
bus, Militibus &  
omnibus fidelibus  
suis per Hiberniam  
constitutis salutem.  
fidelitatem vestram  
in Domino com-  
mendantes, quam  
Domino Patri no-  
stro semper exhi-  
buitis, & nobis es-  
tis diebus nostris  
exhibitori; volu-  
mus quòd in sig-  
num fidelitatis ve-  
stræ tam præclaræ,  
tam insignis, liber-  
tatibus Regno no-  
stro Angliæ à patre  
nostro & nobis con-  
cessis, de gratiâ no-  
strâ & dono, in Re-  
gno Hiberniæ gau-  
deatis; quas distin-

*The King to the  
Archbishops, Bishops  
Earls, Barons, Kts.  
and all our faith-  
ful Subjects consti-  
tuted throughout  
Ireland, Health.  
Commending your  
fidelity in the Lord  
which you always  
shewed to your Lord  
our Father. and are  
about to shew to us  
in our days; we  
will that in sign of  
your fidelity so re-  
markable, so eminent  
you enjoy in our  
Kingdom of Ireland,  
the Liberties gran-  
ted to our Kingdom  
of England, by our  
Father & us; which,  
distinctly reduced  
into Writing, we  
send you, by the*

G

At

et in scriptum re-  
ductas, de commu-  
ni consilio omnium  
fidel. nostrorum vo-  
bis mittimus, signa-  
tas Sigillis Domi-  
ni nostri G. Aposto-  
licæ sedis Legati, &  
fidelis nostri Comi-  
tis Mareschalli, Re-  
ctoris nostri & reg-  
ni nostri; quia sigil-  
lum nondum habu-  
imus, easdem pro-  
cessu temporis de  
Majori consilio  
proprio Sigillo sig-  
natur.

Common Coun-  
sel of all our faith-  
ful People : *Sealed  
with the Seals of the  
Lord G. Legate of  
the Apostolick See, &  
of our faithful Sub-  
ject W. Earl Mar-  
shal Regent of us and  
our Kingdom; be-  
cause we have not  
yet a Seal, intending  
in process of time by  
consent of a greater  
Counsel to seal them  
with our own Seal.*

*Teste at Gloster,  
6. Feb.*

*Teste apud  
Glost. 6. Feb.*

*Answr.*

How specious soever this may  
seem, 'twill neither prove Ire-  
land to have been a Kingdom so  
early, nor to have had a grant of  
the *English Liberties*, in the same  
manner as the *English* enjoyed  
them; that is, so as to have no  
Law imposed upon them without  
their

their *express and immediate consent*, to that very Law. For,

1. 'Tis not to be suppos'd, but that if *Ireland* had been a *Kingdom* before this Charter, *H. 2.* and other Kings of *England* would have stiled themselves *Kings of Ireland*, rather than *Lords*, because of the greater Dignity of *Kingship*; unless *Lord* was chosen as implying more absolute Power; which would argue that *Ireland* did not enjoy the *English* Laws with equal Freedom.

2. This Writ mentions no *Liberties* granted to *Ireland*, but what had been (a) granted to *England*; which besides the improbability that *Ireland* should *H. 3.* have a Charter of the (b) same form with that which did not pass in *England* till 8 Years after, shews the spuriousness of the suppos'd Charter preserved in the (c) *red Book* of the *Exchequer* at *Dublin*, as dated the *November* before the Charter sent the 6th. of *February*: and however, the constant (d) method of sending Laws from hence to

(a) Regno nostro Angli. concessis.  
(b) P. 45.  
(c) P. 46.  
(d) Vid. Inf. temp. E. 1. & deinceps.

G 2 be



P. 45.

be applyed to the use of the *Irish*, without any alteration; may sufficiently detect that Charter, which has the City of *Dublin* instead of *London*.

3. The method of sending to *Ireland* the Laws made here, besides what appears upon the face of the Record 6. Feb; may satisfie any Body that 'twas only a Writ which went along with a Charter or Charters of Laws, passed in Parliament here.

4. This *Writ* was before any confirmation of the *English Liberties* by H. 3. other than general at his Coronation; and therefore bating such Confirmation, the *Charter of Liberties* then sent into *Ireland*, must have been *King John's* which (if it be read according to the due distinction of Periods, and that Translation which the course of Records both before and after enforces, and which the prevalence of Truth has obliged Dr. *Brady* to yeild, to the giving up his whole Controversie with Mr. *Petyt*, and the Author

thor of *Jani Anglorum Facies Nova*) makes express Provision for the City of London, all Cities, Burroughs, and Villis of the Kingdom of England, to enjoy all their Liberties and Free-Customs, and, among the rest, to be of, or to be represented in, the Common Council of the Kingdom.

Brady's Appendix to his complete History of 131. And shall have the Common Advice of the Kingdom concerning the Assessment of their Aids.

But Ireland had no City of London to claim this Privilege; nor could any City of Ireland be included, any otherwise than as part of the Kingdom of England, and therefore subject to the Laws which should be made here.

2. This could not be as extensive to Ireland as 'twas to England; since it could not have extended beyond the English Pale there, and such particular Districts as enjoy'd the English Laws, of special Favour.

Therefore the Charter then sent by H. 3. could, as to this Matter, be no more than a Memorial of that Supreme Law, according to which, England, with all the Dominions belonging to it, was

to be Governed, and an assurance that they should have no Laws imposed upon them, in any other manner, than upon such of the *English* here, as had no Votes in the making Laws. But one end at least of the sending over that Charter must needs have been, suitable to the declared end of a Subsequent sending King *John's* Charter, when the *Justice* of Ireland was required to Summon, not only the *Great Men*, but the *Free-holders* of every *County*, who after the Laws had been read to them, were to swear to the observance of them; beside which they were to be Proclaim'd in the several *Counties*.

F. 52, 53. *Claus.*  
H. 3. m. 8.

5. Admit the Charter sent to Ireland 1. H. 3. had given the *Irish* Liberty to hold *Parliaments*, with *Representatives* from all parts of that Land, according to the *English* Form; This Liberty was derived from a *Convention* of the *States* of the Kingdom of England, or *Parliament*, in the Minority of a King, who had no Judgment



of his own; was under the Government of a Subject whom the *States* had set over him and the *Kingdom*; and that *King* was manifestly Chosen by them, to the setting aside *Eleanor*, who had the Right of Descent as far as that could avail: So that, the King could have no pretence to the imaginary divine Right of Succession; and therefore that Charter must have been derived from the Grant of the People of *England*. And besides, the Record shews that this, tho' sent by the advice of all the *King's faithful People*, was thought to want some Formality to make it a *Parliament*: the Assembly in which it was advised, being held by a *Regent*, may be thought to have occasioned the reference to a *greater* (a) or more solemn *Council*: However, such reference shews, that 'twas not their Intention to be concluded by what was then done; and when a Charter is (b) afterwards sent over in full Form, then there's not a word of *Concession*, but an

(a) De Majori consilio.

(b) Vid. Rot. Claus. 12. H. 3. 8. De legibus & consuetud. observandis in Hib. Cited p. 52, 53.

absolute *Command*, that the Laws be *publish'd* and *obey'd*.

However, take the *Charter* sent them 1. *H. 3.* in the utmost extent imaginable, 'tis not to be thought, that while the *English Parliament* gave those of the *English Pale*, or others in *Ireland*, *Liberty* to hold *Parliaments*, they divested themselves of that Authority by which they gave *such Liberty*.

To use the Words of the great Man *Grotius*,

Grot. de Jure  
belli & pacis.

Se, per modum legis, id est, per modum superioris, obligare nemo potest. Et hinc est, quod legum Auctores habent jus leges suas mutandi. Potest tamen quis obligari suâ lege, non directè sed per reflectionem ex æquitate naturali, quæ partes vult componi ad rationem integri.

*No Man can bind himself by way of Law, that is as a Superior. And hence 'tis, that Law-makers have Right to change their Laws. Yet one may be bound by his own Law, not directly, but by reflexion from natural Equity, which requires the parts to be compos'd with respect to the whole.*

6. Admit the Charter sent 1.H.3. being by consent of the States of the Kingdom of *England*, should be taken for an absolute departure from Power before vested in them; then it ought to be taken *stricti juris*, and to confer no Right beyond what is express'd: And therefore,

1. The Men of *Ireland* had a Grant only of *such Liberties* as were sent them (a) *distinctly reduced into writing*: And unless the usual Practice of sending over the laws made here be taken to explain this, or they shew the very Charter then sent; 'tis to be supposed, that *only such Liberties* were *Expressed* and *Granted* them, as were proper for an *Appendage to the Crown of England*.

(a) Quas distincte in Scriptum reductas.

2. If all King *John's Charter* were sent them, (which I may well admit, according to the explanation of the following usage;) unless they can prove, as we can here, that before that time they had *Common Councils of all the Land of Ireland*, for all Matters of



(b) Quæ om-  
nes tangunt ab  
omnibus tra-  
ctari debent.

of Publick concern, and that the Maxim here had obtain'd there; *Those things which concern all, ought to be treated of by all;* the only end of *Common Councils* of the Kingdom of England, expressed in *King John's Charter*, being in relation to the principal Grievance about the raising of Aids to the Crown; the Grants to *Ireland* could extend no further, than a Liberty to have such a *Council* for the raising Aids.

And there's no doubt, but more Money may be rais'd by such *National Consent*, than can be in the most Arbitrary way: which abates the force of the Argument, from *H. 3.* his desiring the *Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights, Freemen, Cities, and Burroughs of the Land of Ireland*, to Aid him as much as they could, with Men and Money.

(c) P. 50, 51.  
3. H. 3.

And hence, tho' 'twould have been no breach of *King John's Charter*, for the King to raise Aids of his *Tenents in Chief*, for making

ing his Eldest Son a Knight, without calling for them to any Council; that being one of the exceptions out of the Liberties expressed in that Charter; yet H. 3. writ to the Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights, and all his Freemen of the Land of Ireland, intreating them to give him such an Aid.

Rot. Pat. 37.  
H. 3. pars 2.  
m. 10.

6. After all, to shew how little there is in his mighty Argument from the Writ 1. H. 3. Let him take his choice, either that the English in Ireland had a Parliament, granted, or confirmed to them by the Charter sent along with the Writ 1. H. 3. or they had not.

If they had, then those Laws which were made here after such Establishment, in pursuance of the desire of them from Ireland, shew that neither the Parliaments of England, nor they of Ireland thought they had any Power to make Laws there. If there was no Grant or Confirmation of any Parliament there, then the Concession

cession of *English Laws and Liberties*, was no more than a Declaration, that they should be governed by the Laws made, and to be made by *Parliament in England*, or receiv'd there by the consent of the People, giving Force and Authority to their own approved Customs.

P. 58.

But since after all Mr. M.'s learned Flourishes about the Settling of *Parliaments in Ireland*, by the Modus sent over in the time of H. 2. and subsequent Grants ; he admits that under the 3 Kings, H. 2. King John, and H. 3. and their Predecessors, we must repute them to have submitted to the Laws made here in those Reigns, for want of a regular Legislature establish'd among them ; And since, whatever he admits, there's no Colour of such an Establishment by the end of H. 3. Let's see what can be found in the next Reign.

E. 1. having in his absence from *England* upon the Death of H. 3. his Father, been *Elected and Declared King of England*, in a full  
Con-



Convention of the States of this Kingdom; in a (a) Writ sent by those States to Ireland, 'tis affirm'd, that the Government of England, and the Dominion or Lordship of the Land of Ireland, belonged to him by Hereditary Succession; not that he was held to be King by a meer Right of Descent, but as the (b) Ritual of the Coronation of H. I. and the Writ for Proclaiming the Peace of E. I. in England, and Authors of the time shew, the Election of the States of England plac'd him in the (c) Inheritance of the Crown: therefore the States of England declare to the Subjects of Ireland, that they were bound to take the like Oath of Allegiance as the English had done; and this is required of them by the States here, under the Great Seal of England: nor is there colour to believe, that there was any Summons to Ireland or any from thence to come to that Convention; nor, indeed, was there time for such Summons and return before that meeting; notwithstanding Mr. M's assertion of this

Of the Authority of the Parliaments of England, exercised over Ireland in the time of E. I.

(a) Rot. Claus. I. E. I. m. 20. De conservacione pacis in Hibern. (b) Hæreditario judicio.

(c) Claus. I. E. I. m. 11. Quia defuncto jam celebris memoriæ Dom. H. Patre nostro ad nos regni gubernaculum successionem hæreditariâ ac Procerum regni voluntate & fidelitate nobis præstita sit devotum.

(a) P. 96.

this Reign in particular, (a) that the Laws made in *England* and binding them, were *always* enacted by their proper Representatives; meaning, Representatives chosen in *Ireland*: the reason for which he there brings from supposed instances in the Reign of E. 3. seeming not to rely upon his Quotation from the *white Book* of the *Exchequer* in *Dublin* but the Page before,

(b) P. 95.

which 9 E. 1. mentions (b) Statutes made by the King at *Lincoln*, and others at *York*, with the assent of the *Prelates*, *Earls*, *Barons*, and *Commonalty* of his *Kingdom* of *Ireland*. Which, if it implied the presence of the *Commonalty* of *Ireland*, would be an Argument, that all their Rights were concluded by the *Tenants in chief*, who had Lands in *Ireland*, but were Members of the *English Parliament* by reason of their Interest here: but in truth, this shews no more than that, at the request of those of *Ireland*, the *Parliament* of *England* had enacted those Laws; and the Record in their *white Book* is only a Record of the  
trans-



transmission from hence; and proves that, suitably to the practice both before and after that time, they in *Ireland* had no *Parliaments* for enacting Laws, but were forc'd to petition to have them enacted here; and what was enacted upon their *Petition* was truly with their *Consent*. But then the Question will be, whether in the Laws made in that *King's* Reign with intention to bind *Ireland*, their Consent is generally expressed, or implied, any otherwise than from the nature of their former *submission* to be govern'd by the *English Laws*. But if our *Acts of Parliament*, and *Records* concerning them, are clear in any thing, they certainly are in this, that the *Parliament of England* then did, and exercis'd, an undoubted Right of binding *Ireland*, without their immediate consent by any Representatives chosen there: Mr. M. indeed, tho' as I have before observ'd, he admits that *Ireland* was bound by Acts of Parliament here, till the end of the Reign of H. 3. for (4) P. 58.  
want



(a) P. 63.

(b) P. 64.

want of a *regular legislature among themselves* ; yet, suitably to his usual inconsistencies, upon the enquiry, where, (a) and how, the *Statute Laws and Acts of Parliament* made in *England* since the 9th of H. 3. came to be of force in *Ireland*) will have it, that none of them made here, without Representatives chosen in *Ireland*, were binding there, (b) till receiv'd by a suppos'd Parliament 13 E. 2. yet it falls out unluckily, that they have *Statutes* in Print 3 E. 2. which speak not a word of Confirming the Laws before that time made in *England* ; and yet no Man will question, but *Statute Laws of England* made in the Reign of E. 1. were a Rule which the Judges in *Ireland* went by, before the time of E. 2. And that all Judgment given in *Ireland* contrary to an Law transmitted thither, under the Great Seal of *England*, must, upon Writs of Error, have been set aside here as Erroneous.

But let's see whether our *Parliaments* in the time of E. 1. have  
suc

such a deference to the *Irish Legislature*, or that the *English* in *Ireland* then made any such pretensions as Mr. *M.* advances.

If we Credit *Judge Bolton*, our Statute Westm. 1st. which was 3 E. 1. was first confirm'd in *Ireland* 13 E. 2. and till then, according to Mr. *M.*'s Inferences from their receiving or publishing Laws made here, that Statute was of

no force in *Ireland*, being (d) *Introductory of a new Law* in several particulars; as among other things, in Subjecting *Franchises* to be seiz'd into the *King's Hands* for default of pursuing *Felons*, and in enacting, not only the Imprisoning and Fining Malefactors in *Parks*, and *Vivaries*, but forcing them to *Abjure the Realm*, if they could not find Sureties for their good Behaviour.

This Act does not Name *Ireland*, but the King Ordain'd and establish'd it by *His Council*, and by the assent of the *Archbishops*, *Bishops*, *Abbots*, *Priors*, *Earls*, *Barons*, and all the *Commonalty* of

H the

(d) P: 99 Before the Year 641. there was no statute made in England Introductory of a New Law, &c.

## The History and Reasons

*the Realm thither Summoned; for the mending the Estate of the Realm, for the Common profit of the holy Church of the Realm; and as Profitable and Convenient for the whole Realm.*

However that *Ireland*, as part of the *Realm*, was bound by the Law, and by other Laws made 11, 12, and 13 E. 1. without any regard to *Parliamentary* Confirmations in *Ireland*; and that for enforcing Obedience to those Laws 'twas enough to send them thither by some proper *Messenger* under the *Great Seal* of *England* if not without, appears by the Proceedings of the Parliament at *Winchester*, holden the Oct. after the Parliament of *Westim.* 2. (a) Men

(a) Pryns Animad. f. 256.

13. E. 1. m. 5. de Statutis liberatis.

Et Rot. Stat.

quod, &c. "Mem. that on *Friday* "in the Feast of the Exaltation "of the Holy Cross, in the 13th "Year of the King, at *Winchester* "there were deliver'd to *Roger Briton*, Clerk to the Venerable "Father *William*, Bishop of *Worcester* "ford, then Justice of *Ireland*, certain Statutes, made and provided "de



ded by the King, and His Council, viz. The Statutes of Westminster, made soon after the King's Coronation, and the Statutes of Gloster, and those made for Merchants, and the Statute of westm. provided and made in the King's Parliament at Easter ; to be carried to Ireland, and there to be Proclaimed and Observed.

*Prynne omits  
Regis which is  
in the Record.*

*(b) In Hiberniam deferenda & ibidem proclamanda & observanda.*

It appears that among the Statutes delivered to the Chief Justices Clerk, in order to their being published and observed in Ireland, one was the Statute concerning Merchants 12. E. 1. for the enforcing and improving a Statute made at Acton Burnel 11. of that King ; that of Acton Burnel provides a remedy for Debts to Merchants, to be had by calling the Debtor before the Mayor of London, York, or Bristol, or before the Mayor, and a Clerk to be appointed by the King : which, as it seems, 'twas intended that the King should have Power to appoint, in other Cities or Towns within his Kingdom : Accordingly, the Statute 12. E. 1. says, the King

(a) En tout  
son Royaume.

(b) Ou de au-  
tre bon ville.

(c) Per tout  
son Royaume  
D'Engleterre  
& D'Irland.

had commanded it to be firmly kept (a) *throughout his Realm*: and that Parliament 12. for declaring or explaining some of the Articles of the former Statute, named the Mayor of London, or the Chief Governour of that City, or (b) *other good Town*: This Statute expressly *Ordains and Establishes*, that it be thenceforth held throughout the King's (c) *Realm of England, and of Ireland*: And it enacts the form of a Writ upon that Statute; which was to be current in *Ireland* upon several accounts. 1. By the Letter of that Law, which was ordained for the Benefit of Merchants in *Ireland*, as well as in *England*. 2. If it had not been named, the being transmitted to *Ireland* from a *Parliament* here, was a sufficient ground for their observing it. Such observance was included in the terms of their Submission, above one Hundred Years before. 4. The Writ, without any particular Provision, became a legal and current Writ in *Ireland*, by virtue

of an Act of Parliament here, 30

l. 3. which, (a) for the common profit of the Land of Ireland, and unity of the King's Lands, provided, that the Common Law Writs should have the same currency in Ireland, that they have here.

(a) Pryn's Animad. f. 254. 30 H. 3. m. 1. Quia pro communi utilitate terræ Hiberniæ & unitate terrarum Regis Rex vult ut de communi consilio Regis provisum est.

Without enquiring what Records they have in Ireland, of Statutes Staple from the 13th of E. 1. when this Statute which settled them was sent thither; 'tis certain, that from that time the English in Ireland were bound by it, and so held to be in (b) subsequent Statutes of this Realm, confirming this Statute, or supplying its defects.

(b) Vid. 28 E. 3. & 43 E. 3. c. 1.

But what pity 'tis, that neither Judge Bolton, nor Mr. M. thought of an Act of Parliament in Ireland to confirm that Statute 12 E. 1. This was enacted in the Year 1284. which was above 350 Years before that fatal *Ara* of Innovations 1541; from whence it seems Calamities of all kinds are to be dated. But, I should think, here is at least one positive Precedent before that time, of an English Act of Parlia-

P. 99, 103, 105



*The History and Reasons  
ment's binding the Kingdom of Ire-  
land.*

And to me it seems as plain, that in the Judgment of the Parliament 13 *E. 1. Ireland*, tho not named, was bound by a Statute made here; for which I shall refer him to the Interpretation then made of the extent of the Statute of *Gloster*, which had been enacted in the 6th. of that King's Reign.

(a) *Stat. of  
Gloster 6. E. 1.*

Some would think (a) those Statutes to have been no more than *Ordinances*, made by the King and his Counsel only: and that our Kings thus made *Ordinances* of that kind, some may gather from *Fleta*

(b) *Habet Rex  
consil. suum  
in Parl. suis.*

who speaks of the King's Counsel in which, not only erroneous Judgments were corrected, but new Remedies provided; yet *Fleta* speaks this of the King's Counsel in his Parliaments: and thus, the

(c) *Some Sta-  
tutes made by  
the King, the  
Prelates, Earls,  
Barons, and his  
Council.*

the Statute of *westm. 2.* (c) seem to restrain the making that of *Gloster* to the King and his Council: the Statute of *Gloster* it self shew that the Counsel was to be taken as acting in conjunction with the

*Prelates, Earls, and Barons, and that under the word Barons the Commonalty were included as is lower Nobility, or dignified by their Election to Parliament; accordingly the Statute of Gloster says suitably to latter Writs of Summons, the (a) more discreet of the Kingd. as well Great as Small were summon'd: So that the Statutes of Gloster were made as other Statutes 3 E. 1. by that King's Council, and by assent of the Commonalty; where the Lords were manifestly included under the word (b) Counsel, agreeably to the ancient form of (c) Writs of error, or other Writs returnable into Parliament, before us, and our Counsel in our Parliament, or at our next Parliament after, or at such a time, there to do what the King shall think fit to ordain, by advice of his Counsel.*

(a) 3. Inst. & Rot. Stat. de temp. E. 1. E. 2. E. 3.

Appellez les plus discrez de son regne, ausibien des greindres come des meindres. (b) per son conseil, & per assentement des tout la Commonalty.

(c) Vid. Regill. Brev. ed. An.

531. f. 17. Quod sint coram nobis & consilio nostro in parl. nostro un. Rot. Claus. 17. E. 1. pars m. 8. Ad prox. parl. post festum Paschæ, ut tunc inde Rex faciat quod de consilio suo duxerit ordinandum.

For evidence that this did not exclude the Lords, I may refer to  
H 4 the

the Rolls of *Parliament* of several Reigns, and particularly to those of the 20<sup>th</sup>. and 21<sup>st</sup>. of E. 3. In the 20<sup>th</sup>. the (a) Commons are desired to deliver such Petitions as were then ready, to the Clerk of the Parliament; which Petitions are said to be brought before the *Great Men of the Counsel*. That they were but of the nature of a *Committee* to inform the *King*, and *Lords*, of the *Bills* or *Petitions* which came from the *Commons*, appears by the Proceedings of the next Year; when the *Commons* having

(b) Rot. Parl. 21, E. 3 m. 9. s'aviserà ove les Grants.

(c) Rot. Stat. temps E. 1. E. 2. E. 3. Pur le amendment, de son Royaume & pour plenere exhibition de droit, si come le profit de office regal demand.

(d) Vid. the Stat. 3. Inst.

made *Petitions* of an extraordinary nature, the *King* answers, (c) "He will advise with the *Lords*. To return to the Statute of *Gloster*, there the *King* by such advice as I have shewn, made Laws for the amendment of his *Realm*, and for the plenary exhibition of Right, as the profit of the *Regal Office* requires; and to remedy (d) mischiefs, damages, and disorders, suffer'd by the *People* of the *Realm* of *England*; without the least mention of *Ireland*.

And



And yet we have the judgment of the Parliament in the 13<sup>th</sup>. of that King, that *Ireland* was within the remedy of that *Statute*, as part of the *Realm of England*, as appears by this Preamble. (a) Where of  
 “late our Lord the King in the  
 “Quinzisme of *St. John Baptist*, the  
 “Sixth of his Reign, calling toge-  
 “ther the *Prelates, Earls, Barons,*  
 “and his *Counsel*, at *Gloucester*;  
 “and considering that divers of  
 “this *Realm* were disherited by  
 “reason that in many cases where  
 “remedy should have been had,  
 “there was none provided by him  
 “nor his *Predecessors*; ordained cer-  
 “tain *Statutes*, right necessary  
 “and profitable for his *People*,  
 “whereby the *People of England*,  
 “and *Ireland* under his *Government*,  
 “have obtained more speedy justice  
 “in their oppressions than they had  
 “before, and certain Cases wherein  
 “the *Law* failed remain undeter-  
 “mined, and some remained to be  
 “enacted, that were for the reform  
 “of the oppressions of the *People*;  
 “Our Lord the King in his *Parlia-*  
 ment

(a) West. 2.  
 13. E. 1. Anno  
 1285. Printed  
 Stat.

(b) Stat. ed.  
 An. 1529 Quæ-  
 dam statuta  
 populo suo  
 valde necessa-  
 ria utilia edi-  
 dit, per quæ  
 populus suus  
 Anglicus &  
 Hybernicus  
 suo regimine  
 gubernatus.

(c) Ad supple-  
tionem dict.  
Stat.

Et Statuta e-  
didit.

“ ment, after the Feast of *Easter*,  
“ holden the 13<sup>th</sup>. of His Reign,  
“ at *westminster*, caused many Op-  
“ pressions of the People and  
“ defaults of the Laws, for the (c)  
“ supply of the defects of the, said  
“ Statutes of Gloster, to be rehear-  
“ sed and made Statutes, as will ap-  
“ pear here following.

Vid. Regist.  
Writs f. 13.  
Quando uxor  
admittitur ad  
jus suum de-  
fendend. & f.  
16. De com-  
muni consi-  
lio Regni no-  
stri.

This rehearsal of the Grievan-  
ces was, for certain, by the *Peti-  
tion* of the *Commons* of this Realm,  
and the Statutes there made, as  
the *Register* of Writs has it, were  
by the *Common Counsel* of the *King-  
dom* : And this *Counsel* not only  
declared Laws which were bind-  
ing to *Ireland*, but made new ;  
tho' Mr. *Molineux* will have it,  
that from the time of *Magna Cha-  
ta* to the 10<sup>th</sup>. of *H. 7.* no Laws  
were, or are in force in *Ireland*,  
unless allowed of by Parliament  
in that Kingdom : except only such  
as are *Declaratory* of the *Common  
Law* of *England*, and not *Introdu-  
ctive* of any new Law. And where-  
as he is pleas'd to say,

“ As

“ As to such *English* Statutes as  
“ seem to comprehend *Ireland*,  
“ and to bind it under the gene-  
“ ral words of all his Majesty's Do-  
“ minions, or Subjects, whatever  
“ has been the opinion of private  
“ and particular Lawyers in this  
“ Point, *I am sure* (says he) *the*  
“ *Opinions of the Kings of England,*  
“ *and their Privy Council have*  
“ *been otherwise.* I may say upon  
much better grounds, if any *King*  
and *His Privy Council* did any thing  
to Warrant this Assertion, the  
Judgment of *E. 1.* and *His Coun-*  
*cil in Parliament*, was to the con-  
trary, and is of *greater Authority.*

And 'tis to be remembred, as  
I before shewed, that the *Statutes*  
of *Gloster*, which do not Name  
*Ireland*, and the *Statutes of west. 2.*  
which do, were both delivered to  
the *Clerk* of the Justice of *Ireland*,  
in order to their being published  
and observed there. And 'tis  
evident, that *Ireland's* being bound  
by *Parliaments* in *England*, with-  
out any consent expressed in *Ire-*  
*land*, was not merely the Judg-  
ment



ment of the times above referred to, but the settled Judgment of that King and His Council, in His Parliaments.

(a) Priyn's Animad. on Lord Coke Pat. 8 E. 1. m. 13. Hib. Omnibus Anglicis terræ.

Quod nobis & consilio nstro videbitur expedire.

Thus in (a) the 8<sup>th</sup> of that King, there's a Writ taking notice, that the *Irish* had desired to be governed by the Laws of *England*: upon which the *King* requires all the *English* of the Land of Ireland to Certifie, whether this might be granted without prejudice to them; declaring that the *King* would make such Provision, as should seem expedient to Himself, and His Council: which, plainly enough referred to His Council in Parliament. If, upon their Certificate, a general Law had passed to grant the *Irish* their Request, the mentioning the *consent* of the *English* there, could not be thought to derogate from the *Legislature* here; the Authority of which was intimated in that very reference, and was fully asserted in that *Kings* Reign by an Act of Parliament, made here after that time, and the Proceedings

ceedings thereupon, both in *England* and *Ireland*.

By the Case (a) of mixt Monies in *Ireland*, we are informed, that 29 E. 1. when, by the King's *sepecial Ordinance*, the *Pollards* and *Crochards* were cry'd down and made of no Value; the *same Ordinance* was transmitted into *Ireland*, and Enrolled in the *Exchequer* there, as is found in the *Red Book of the Exchequer* there.

(a) Davis Rep. f. 21. h. Issint 29 E. 1. quand per special ordinance del Roy, &c.

And agreeably to this, it appears by the Statute Roll here, that this *Ordinance*, which in truth was an Act of Parliament, or else an other of the same kind, was sent to *John Wogan*, then *Chief Justice of Ireland*, or to his Lieutenant.

Rot. Stat. de temp. E. 1. E. 2. E. 3. Johan Wogan, Justice Dirland, ou a son Lieutenant.

This is only a short Entry referring to the known usage; But the very next Record of a transmission to *Ireland* of a Statute made here, which was that about *Juries*, is more express.

Printed Stat. 21 E. 1. c. 1. Record 22 E. 1.

Mem. quod istud Statutum de verbo ad verbum missum fuit in Hib. T. R. aput Kenynt. 14. die Aug. Rni sui 27. Et mandatum fuit J. Wogan Justic. Hib. quod præd. Stat. per totam Hib. in locis quibus expedire videret legi & publicè proclamari, & firmiter teneri faciat.

Note a Stat. made in the 21 or 22 was not sent to Ireland till the 27th.

*Mem. That that Statute, word for word, was sent into Ireland, Teste the King at Kenynton 14. Aug. in the 27th. of his Reign. Command was given to John Wogan, Chief Justice of Ireland, to cause it to be read in those places in which he shall think it expedient, and to be publickly Proclaimed and Observed.*

This Statute does not name *Ireland*, nor has general words which seem to include it: But it seems some years after to have been Enacted, that this Statute should be transcribed, and sent to *Ireland* for a Law given them by Parliamentary Authority.

(a) Ryley's Placita Parl. f. 379. 381, 382.

In the 35th. of (a) *E. 1. will. De Testa* was Impeach'd in *Parliament*, for grievous Oppressions and Extortions upon the People, by Colour of Authority from the *See of Rome*:



Rome: This, upon the Petition of the *Earls, Barons, and other Great Men, and the Commonality of the whole Realm of England*, occasioned (a) general Law and Provision, for the State of the King's *Crown, and also of His Lands of Scotland, Wales, and Ireland.*

(a) Pro Statu Coronæ Regiæ nec non terrarum ipsius Regis Scotiæ Walliæ & Hiberniæ.

The Remedy was Enacted by the *b Assent* of the King, and the whole *Council of Parliament*; and 'twas Enacted, that for the future such things should not be permitted within (c) the *Realm*.

b Ex assensu Dom. Regis ac toto consilio Parliamenti.

That *Ireland* was then included as part of the *Realm*, appears not only by the intention before declared, but agreeably thereunto, The Statute then made is, by Authority of *Parliament*, sent to the *Justice of Ireland*, as well as to the Chief Governors of other the King's Dominions; enjoining them to enquire and proceed against those who had offended in that kind, and to cause the *Provision, Agreement, and Judgment*, of that Parliament, to be *Firmly and Inviolably observed in those Lands.*

(c) Non permitterentur in Regno.

Et mandatum est Principi Walliæ & Com. Cest. & Custodi Scotiæ & Justic. Hib.

In eisdem terris firmiter & inviolabiliter observari.

Mr. M.

Ordinatio  
pro Statu Hib.  
falsly supposed to  
have been 17  
E. 1.

P. 88.  
Stat. ed An.  
1529.

P. 88.

P. 89.

Vid. Rot.  
Claus. 18. E. 1.  
m. 8.

Mr. M. having, as he thinks, answer'd an Objection from the *Ordinance for the State of Ireland*. Printed in our Statute-Books not only that of 1670. but even in others much more Ancient, as made 17 E. 1. I shall shew him some new Matter, which may deserve his farther Consideration: and yet tho' he thinks he has prov'd, 1. That this *Ordinance* was never receiv'd in *Ireland*. 2. That 'twas *meerly an Ordinance* of the King, and *His Privy Council* in *England*; it might be enough to observe, That the Clause which he Instances in, forbidding the *King's* Officers to purchase Lands there, upon pain of Forfeiture, has an *Exception for the King's Licence*; and tho' he has not been at the pains to examine whether there were any such Licences from *England*, I can shew him in the very next Year, a confirmation under the Great Seal of *England*, of a grant of *Land's* there, before made from hence: which were sufficient security against the forfeiture.

ture. 2. If 'twere admitted that the Ordinance were made by the King and his *Privy Counsel*, 'twould be very difficult for him to prevail upon many to believe, that a *Land* or *Kingdom*, which in all the principal Parts of Government was under the controul of the Great Seal of another Kingdom, was (as he pretends) (a) a complete *Kingdom within it self*; (b) or a *Kingdom regulated within it self*; the contrary of which appears in numerous instances of the time of which we are at present enquiring; as of leave from hence to huse Ecclesiastical Governors, Parsons, Directions, for the Proceedings of the *Courts of Justice*, and *Council in Ireland*; the appointing *distinct Courts of Judicature*, Grants of Lands, Offices, Liveries out of the King's Hands of Lands held in Chief of the Crown of *England*, Licences of alienation, and the like.

Theſe & Bar.  
ſuis de ſiccio  
Dublin. Pro  
Othone de  
Grandifon.

(a) P. 148.

(b) P. 155.

Further than all this, there's a precedent of taxing *Communities* by Authority from hence. It muſt

I

be



be agreed, that 'twas frequent for *Kings* to grant to *Cities* and *Towns* in *England*, power to raise *Customs*, or *Duties* for *Murage*, the building or repairing their Walls, to be levied upon Goods and Merchandizes brought thither; in these Grants there was no mention by what *advice*, or *consent* they issued; but 'tis to be presumed that the *Great Seal* was not rashly affixed; nor were they extended farther than to the Walls, which secured the Persons and Goods of those who paid the Duty: yet the *Great Seal of England* has been applyed much more absolutely, to the binding the property of the Subjects in *Ireland*, as may appear by this Record.

Pat. 18. E. 1.  
m. 13. De mu-  
ragio Dublin.

R. Ballivis &  
probis hominibus  
suis Dublin Salutem  
Cum in subsidium  
villæ claudendæ  
vobis nuper per  
litteras nostras Pat.  
concefferimus quod  
quasdam consuetu-  
dines usque ad cer-  
tum tempus de sin-

*The King to the  
Bayliffs and honest  
Men of Dublin  
Greeting; since, in  
aid of walling your  
Town, we lately by  
our Letters Patents  
granted, that you  
should take some Cu-  
stoms to a certain  
day, of every thing*  
to

gulis rebus venalibus ad eandem villam venientibus capietis, ac dilectus & Fidelis noster Nic. de Clere Thes. nost. Hibern. testificatus fuerit coram nobis, quod vos ad mandatum ejusd. Nic. magnam partem pecuniæ provende consuetud. antedict. in clausuram scaccar. nostri Dublin posuistis nos ea de causa, &c.

to be sold coming to that Town. And our beloved and faithful Subject Nic. de Clere Treasurer of Ireland has certified us, that you, at the command of the said Nicholas, have employed great part of the Money arising by those Customs, to the enclosing or repairing the Exchequer at Dublin. Therefore, &c.

The King by his Great Seal of *England* continues the Tax for Three Years longer than his first Grant, and allows of the applying part of it to an end very different from that of the *walling the Town*.

For a yet farther Evidence of the more absolute Dominion, which E. 1. exercis'd over *Ireland*, than he pretended to in *England*; I shall shew, that he took to himself Authority to set aside what is supposed to have been settled by

an *Ordinance*, in the seventeenth of his Reign.

Ordin. pro  
Statu Hib.  
c. 2.

One of the said Ordinances provides, That neither *the Justice of Ireland*, nor any other of the King's Officers, by colour of their Office, take Victuals from any Person without his Consent, *unless in case of necessity*, and that by *the assent of the chief of the King's Council of those Parts*, and by Writ, out of the *Chancery of Ireland*.

Pat. 18 E. 1.  
M. 2.

And yet in the next Year after this *Ordinance* is supposed to have been made, the *King*, as a particular Indulgence to the *Citizens of Roscommon*, grants that the *Constable of Roscommon*, or other the King's Officers, shall take no *Victuals*, or other things of them without their Consent, *unless there be a necessity for it in time of War*. And this exemption is only by a Patent during *Pleasure*.

Nisi tempore  
guerræ neces-  
sitas hoc de-  
poscit.

Has literas  
nostras fieri  
fecimus pa-  
tentes quam-  
diu nobis pla-  
cuerit duratur

But, in truth, this was no violation of the *Ordinance* for the State of *Ireland*: For, besides that, I shall shew when 'twas made, and how, in another Reign; 'Tis certain it could



could not be in a *Council* at *Nottingham* in the *Octaves* of *St. Martin*; not only as may appear to any one who will trace the *Close* and *Patent-Rolls*, and the *Use* of the *Great Seal*, which went along with the *King* from his *Landing* at *Dover*

(a) on the 12th of *August*, to the (a) *Claus. 17.*  
(b) 16th of *November*; during *E. 1. M. 4. In-*  
which time the *Seals* were far from *tus. Nota Oct.*  
*Nottingham*, but chiefly because *Martini, is but*  
there was a *Parliament* at *Westmin-* 2 *Days after.*  
*ster*, appointed to be held on the  
*Craftino Martini*; which, 'tis to  
be presumed, met accordingly, tho'  
Mr. *M.* is positive that *E. 1. 16* held  
no *Parliament* in the 17th of his  
*Reign*.

But, for his *Conviction* in this  
particular, during d the *K's* *Absence*  
in *Foreign Parts*, *Edmund* *Earl* of  
*Cornwall*, being *Custos*, Dated the  
*Writs*, among which there was one  
referring a *Matter* to the *Judgment*  
of the *King* and his *Council*, in  
the next *Parliament* to be after  
*Easter*.

And to satisfy Mr. *M.* that there  
was no need of a *Council* at *Notting-*

(a) Claus. 17.  
E. 1. M. 2. dorso.  
Nobis ea in  
proxim. Parl.  
nostro referant  
(b) Quod ve-  
niant apud  
Westm. in  
Crast. instan-  
tis Festi Sancti  
Martini.

ham, nor could there be one the  
*Octaves* of *St. Martin*, it happens  
that on (a) the 14th of that *October*,  
a Writ issued to the *Sheriff* of *Not-*  
*tingham*, acquainting him of a  
Commission to certain Persons to  
hear the Miscarriages of the King's  
Officers in that Country, and to  
give me an account thereof at the  
*next Parliament*; and therefore  
commands the *Sheriff* to Summon  
all Parties aggrieved, to be at *West-*  
*minster* that year in the Morrow  
of *Sanct* (b) *Martin*.

That 'tis to be  
believed a Par-  
liament was  
holden 17 E. 1.  
tho no Summons  
to it found.

(a) Vid. Dug-  
dale's Summons  
to the Nobility.  
That which he  
cites 5 E. 1. is a  
Summons to the  
Army.

(b) Vid. Stat.  
ed. An. 1529.  
p. 21.

I must own that I have not found  
any Record of a *Writ* of *Summons*  
for any of the Members to come to  
Parliament that Year, nor has  
*Sir William* (a) *Dugdale* found any to  
the *Lords*, till the 22d; and yet  
'twill be agreed, that there were  
Parliaments between the 49th of  
*H. 3.* and the 22d of *E. 1.* and 'tis  
certain the Statute of *Westm. 1.* (b)  
3 *E. 1.* is express, that the *Arch-*  
*bishops*, *Bishops*, *Abbots*, *Priors*,  
*Earls*, *Barons*, and all the *Com-*  
*monalty* of the *Land*, were Sum-  
moned to that *General Parlia-*  
*ment*,

ment, and assenting to the Laws then made.

Mr. Prynne, as I take it, had not seen any Writ of Summons to the Commons, till 26 E. 1. Yet I have found in the Close-Roll of (a) 18 E. 1. as Dr. Brady, and Mr. Petyt have in the Bundle of Writs, this following.

Of A Summons  
to Parliament  
18 E. 1.

(a) Rot. Claus.  
18. E. 1. M. 10.  
dorfo.

Rex. Vic. Northumb. cum per Com. Bar. & quosdam alios de proceribus regni nostri, nuper fuisset requisiti super quibusdam tam cum ipsis quam cum aliis de comitatibus regni illius, colloquium habere velimus & tractatum; Tibi præcipimus, quod duos vel tres de discretioribus & ad laborandum potentioribus militibus, de Com. præd. eligi & eos ad nos usque Westm. venire facias; sine

The King to the Sheriff of Northumberland. Forasmuch as we were lately in a special manner entreated by the Earls, Barons, and some others of the Peers, or Nobility of our Realm, that we would have a Colloquy and Treaty upon some Matters, as well with them, as with others of the Counties of the Realm. We require you without delay, to cause to be Elected, and to come to us as far as Westminster, two or three of the  
I 4 more

That cit d by  
Dr. Brady is  
to the Sheriff of  
Westmorland.



dilatione. Ita quòd  
 sint ibid. à die Sancti  
 ibidem a die Sancti  
 Johannis Baptistæ  
 prox. fatur in tres  
 septimanas ad ultim-  
 um, cum plenâ  
 potestate pro se &  
 totâ Communitate  
 comitat. præd. ad  
 consulendum &  
 consentiendum pro  
 se & communitat.  
 illâ, hiis quæ Com.  
 Bar. & Proceres  
 præd tum duxerint  
 concordand. T. R.  
 apud West. 14 die  
 Junii.

*more discreet, and  
 more able to travail  
 of the Knights of  
 the said County: So  
 that they be there at  
 the latest, within  
 three Weeks, from  
 the Day of St. John  
 the Baptist next en-  
 suing, with full  
 power for them-  
 selves, and all the  
 Commonalty of  
 the said County, to  
 consult and consent  
 to those things, which  
 the aforesaid Earls  
 and Barons shall  
 then think fit to be  
 agreed. Test. the  
 King at Westm. the  
 14th day of June.*

Dr. Bradie's  
 Answ. p. 230.  
 Dr. Bradie's  
 Introduction to  
 his Compleat  
 History.

This Dr. Brady, in his Answer to  
 Mr. Petyt, more truly than he is a-  
 ware, calls a *Summons* to a *Parlia-  
 ment*: However in his Introducti-  
 on he will have it, that the Laws  
 were then made by *the King* and his  
*Peers*, before the *Knights* of the  
*Shires* came; the Statute of that  
 time saying, that the *Parliament*  
 was

was holden in the *Quinzism* of St. John, and that the Laws were made at the (a) *Instance* of the Great Men.

(a) *Ad instantiam Magnatum.*

But he might have observed,

1. That the Provision (b) then made, is called a *Statute*.

(b) *Et sciendum est quod istud statutum tenet locum deterris*

2. That the *Council* wherein it pass'd, is called a *Parliament*.

*venditis tenend. in feodo simplici tantum.*

3. That the Matter enacted, was a *general Law*, and of *general Concern*; it being for the encouraging of Purchasers, and engaging the more Persons to a National Interest by Propriety in Land, which till that time was in much fewer Hands; because whoever purchased any part of an Estate, had been liable to be charged with all the Rents and Services which lay upon the whole; and there was one other necessary Provision, against Alienations in *Mortmain*.

*Quia emptores terrar. &c. There us'd to be Manucaptors for this purpose.*

4. The Precept to the *Sheriff* was to cause the Election to be made *forthwith*, and to take care that the Parties were bound to be at *Westminster* by three Weeks after the Feast of St. John, at the farthest.

*theft.* The Day when the *Parliament* was holden, was but 5 or 6 Days before; which shews, that 'tis absurd to imagine, that there should have been a Law made of that immediate consequence to all Owners of Land, before the *Knights* of the *shire* came up; not only because they being obliged to be at *Parliament* by such a Day *at the latest*, may well be supposed to have come 5 or 6 Days before the utmost extent of their time, to avoid the Forfeitures of the Bonds which they us'd to give for their Appearance; but chiefly, because, as 'tis well known, whenever a Law passes, 'tis in Judgment of Law held to have pass'd the first Day of the *Session*; which Day might have been agreed at their former Meeting. Nor is it absurd to believe, that there might be a *Summons* to require the *Sheriffs* to secure *Full Parliaments*, even tho the Days of Meeting and of Elections below, might have been certain.



## of the Dependency of Ireland.

139

The true reason why so few Writs of Summons, of those early times, are to be found, seems to be, that once, at least, in Year the Parliaments met of ourse.

*Why so few Writs of Summons in those Times now to be found.*

The Confessor's Law speaks of the

a) Calends of May as the fix'd Day. (a) Vid. Lamb's Archaionom Leges St. Edw.  
in the (b) 1st of E. 1. the Custos of the Realm, as appears above, in (b) Rot. Claus. 17. E. 1. sup.  
the King's Absence issued Writs, not for Elections to Parliament, but returnable into the Parliament, to be holden next after Easter, without mentioning any Day, as 'twere commonly known; but no Parliament being holden soon after Easter, because of the King's being out of the Land, a Return into a Parliament appointed to sit after the King's Landing, was to a Day certain. But that at the beginning of E. 1. the time of holding a Parliament was look'd upon as so fix'd, that there was no need of Summons, appears by that King's Letter to the Pope, 3 E. 1. referring him to the Deliberation of the Peers of the Kingdom in a Parliament, consuevit.

Rot. Claus 3. E. 1. M. 9. dorso in Parl. Quod circa octabas Resurrectionis Domini celebrari in Anglia consuevit.

## The History and Reasons

*ment, which used to be holden in England, about the Octaves of the Resurrection of our Lord.*

5. If the mention only of the *Instance of the Great Men, or Nobility*, be an Argument that the Law was then made before even the *Knights of the Counties* came up, tho Summoned to *Consult and Consent* ; the many Laws which have pass'd immediately upon the *King's Answer to the Petition of the Commons*, would argue as strongly, that those Laws were made without the consent of *the Lords* ; but as in such case, either they were included as part of the *Community of the Kingdom*, or else the *King* answered *by their Advice* ; So at the making the *Statute 18 E. 1.* either the *Commons* were under the Word *Magnates*, as the *lower Nobility*, or Men dignified by being *Senators*, or else the *Great Lords* finding themselves chiefly agrieved, as being unable to pay their Debts, because none would buy their Lands ; this Law might have pass'd chiefly at their desire : But then, since 'tis  
mani-

manifest it was in *Parliament*, 'twas by the Consent of the *Commons*; but I rather think that the *Commons* were then included under *Magnates*, because I find them so in Times after this; and that Petitions were made to them with as high *Ascriptions* as were given to the *Great Lords*. *Commons included under Magnates.*

In the 1st of *E. 3.* a Statute was made, as one Record has it, by the (a) *Common Council of the Kingdom*, (a) *Rot. Pat. 1 E. 3. M. 10.* as another (b) by the *King, the Prelates, Earls, Barons, and the Com-* (b) *Rot. Claus. 2 E. 3. M. 20.* *monalty of the Realm*; and yet an Historian well conversant in the Records, and common acceptation of Words in that Time, speaking of this very *Parliament*, and of the *Queen Mother's coming to London*, with *E. 3.* her Son, says, *Thither also Convened the whole (c) Nobility of the Kingdom, having been before summoned to the holding a Parliament.* (c) *Tota regni nobilitas citata per prius ad Parl. semend.* *Walsingham, F. 126.*

In after Times there are numbers of Petitions to the *House of Commons*, from Persons of Quality; from the City of *London*, and others:



(b) Rot. Claus.  
4. H. 4. n. 19.  
Pur Monsieur  
Thomas Pom-  
mercy Chiva-  
lier. Tres ho-  
nourables &  
Tressages  
Communes.

(e) Rot. Parl.  
8. H. 6. n. 51.  
Tressages &  
Tres honoura-  
bles.

From the Mayor,  
Aldermen and  
Commons of the  
City of London.  
Rot. Parl. 3.  
H. 5. pars 1. n. 7  
Vid. Sup. of  
Cities and Bo-  
roughs.

Vide sup.

thers: *To the (a) Most Honourable, or Right Honourable, and Most Wise the Commons in this present Parliament Assembled.*

The (b) *Honourable and Most wise, and the like.*

(c) But some who will admit that the *Knights* of the Shire, who indeed are in many Records call'd *Grands* of the *Counties*, were part of the *Magnates* 17 E. 3. will have it, that the *Citizens* and *Burgesses* were not, because. 1. They, in those Times, used to be distinguished by the Name of *Commons*, from the *Knights* of the *Shires*. 2. There's no mention of any *Summons* to them in the Records of 18 E. 1. when there was to the *Knights* of the *Shires*. But for a full answer to this, I desire it may be considered.

1. That the Meeting 17 E. 1. appears by the Statute then made, to be a *Parliament*, that Dr. Brady himself has yielded, that the *Cities*, *Boroughs*, and *Cinque Ports*, and *Vills*, had by King John's Charter, right to be of the *Common-Council*.

*Council of the Kingdom* ; which is the Phrase most generally used in the *Ancient Register of Writs*, to denote a *Parliament*.

2. There were *Boroughs* long before the reputed *Conquest* : As for instance, *St. Edmund's Bury*, or *Burgh*, made a Borough in the Time of King *Edmund*, confirmed in the Reigns of *Cnute*, the *Confessor*, *W. I.* and other Kings.

3. *Boroughs* frequently occur in *Dooms-day Book*, that great Survey taken in the Reign of *W. I.* and are mentioned as such in the Time of *Edward the Confessor*.

4. No one *Charter* of ancient Times since *W. I.* can be found, giving any *Borough* right to send Members to *Parliament* ; but that has seem'd the consequent of being a *Borough*, having a *Gild* for Merchandize, and answering to the King, or other chief Lord, as one entire Body : upon which account they appeared by Representation, while individual *Tenants* were in the great *Councils* upon their Personal Right.

5. That

(a) Rot. Pat.  
17. E. 3. p. 1.  
m. 20. dorso.

5. That for asserting the Right of *Boroughs* to be represented in Parliament, it generally was enough to plead that they were *Boroughs*; yet one instance at least is to be found within two Reigns after the time of our present enquiry, where a (a) *Borough* Pleads, or Alledges in Parliament, that they had been made a *Borough* in King *Athelstan's* time, and ever after had been represented in Parliament by two Members of their own chusing: and this the then Parliament, or the *King's Council* in it, were so far from thinking improbable, that upon that *Borough's* Allegation that the Charter was lost, they direct an enquiry, with declared disposition to have it renewed.

6. These *Boroughs*, whether holding of the *Crown* in chief, or of *Great Lords*, were either *Baronies*, or parts of *Baronies*, upon the account of *Knights Service*; or Honors by



by reason of other free Tenures, and their Charters, that they should hold *freely and honourably*, as many of them run ; and thus the Members in *Parliament*, who serv'd for these *Baronies*, or *Honours*, were part of the *Baronage* of the Kingdom : Not but that sometimes *Barony* and *Honour* are used without distinction concerning them ; and thus that ancient Borough of *Barnstaple* (a) which held of the Lord *Tracy*, is in the same Record call'd both a *Barony*, and an *Honour*. Which Honour, as appears by this instance, was not limited to immediate Tenure of the Crown ; and that this was not derived from the grant of a reputed *Conqueror* might be proved by numbers of Authorities, of which I shall here content my self with one out (a) of *Doomesday-Book*.

*Liberè & honorificè.*

(a) Pat. 15.  
Jo. par. 1. M. 11  
Reddidimus  
Hen. de Tracy  
Baroniam de  
Bardestaple.  
Ib. Dotum  
honorem de  
Bardestaple.

(a) Vid. *Doomsday* de Norwic.

In Norwic erant  
temp. E. MCCCXX  
Burgenses, &c. To-  
ta hæc villa redde-

In Norwich there  
were in the time of  
Edward 1320. Bur-  
gesses. All this

K

bat

bat TRE 20 l. Regi  
& Comiti 10 l. In  
novo Burgo (a)  
XXXVI Burgenses  
and VI Anglici. De  
hoc toto habebat  
Rex 2 partes &  
Comes tertiam;  
modo XLI Burgen-  
ses Franci in domi-  
nio Regis, & Comes  
Rogerus Bigot ha-  
bet L. & sic de ali-  
is. Tota hæc terra  
Burgensium erat  
in Dominio Comi-  
tis Rad. & conces-  
sit eam Regi in  
commune, ad fa-  
ciendum Burgum  
inter se & Regem:  
Ut testatur Vice-  
comes.

(a) Nota, What  
a small propor-  
tion this new  
Plantation of  
French bore to  
the 1320 Bur-  
gesses, and yet  
some English  
were mix'd e-  
ven among the  
French. Besides  
the French seem  
to have had but  
11 added to  
their number  
from the Confes-  
sors time to the  
20th. of W. I.

Town in the time of  
King Edward yiel-  
ded the King 20 l.  
and the Earl 10 l.  
In the new Bo-  
rough there were 36  
Burgesses, and six  
of them English. Of  
all this the King  
had two parts, and  
the Earl the third.  
Now there are 41  
Burgesses in the  
Kings demeasn, and  
Earl Roger Bigot  
has 50. and so of  
others. All this  
Land of the Bur-  
gesses was in Earl  
(c) Ralphs Deme-  
asn, and he granted  
it to the King in  
common, to make a  
Borough between  
him and the King:  
As the Sheriff at-  
tests.

This Earl was Ralph Guader  
or wader, who continued Earl of  
Norfolk, or at least of Norwich,  
from

from within the *Confessor's* Reign,  
till the 9<sup>th</sup>. or 10<sup>th</sup>. of *W. I.*

7. The Freemen, or at least they who had Borough-holds in these, or in some of them, are in *Doomsday-Book*, called *Barons*, as particularly in the Borough of *Warwick*.

Et in Burgo de Warwic habet Rex in Dominio suo CXIII Domus, & Barones Regis ha- bent CXII. de qui- bus omnibus Rex habet geldam.	<i>And in the Bo- rough of Warwick the King has in his demeasns 113 Hou- ses, and the Kings Barons have 112. of all which the King has Aid.</i>
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8. They who were interested in the Government of these *Boroughs*, and had Right to look after their common concerns; could not but be *Barons* as properly, as the Free hold Tenants of *Lords* of *Mannors*, *Freeholders*, who were Judges in the County Courts, and the *Freemen* of *London*, who are call'd *Barons* in several Records, and



other undoubted Authorities ;  
and the *Barons* of the Cinque  
Ports.

(a) *Doomsday-  
Book* TRE  
reddebat, &c.

Of *Dover* in particular (a) *Doomsday Book* says, in the time of *King Edward* it yielded 18 *l.* of which *King Edward* had two parts, and *Earl Godwin* the 3. And a *Charter* (c) to this *Port* in the beginning of *King John's* Reign confirms to his Men of *Douera* the *Confessor's* Charter, together with the Charters of *W. 1.* and other Kings after the reputed Conquest.

(b) *Rot. Cart.*  
2. Jo. m. 17.  
n. 51.

9. If 'tis to be thought, that no *Citizens* and *Burgeffes* were at the Parliament 17 *E. 1.* because no *Summons* appears for other *Commons*, besides the Knights of the *Shires* ; by the same reason 'tis to be thought, that none of the *Great Lords* were there ; no *Summons* to them appearing.

10. In

10. In the Writs for chusing Rot. Pat. 12.  
E. 2. m. 5. Knights of the Shires there was no occasion to mention the choice of others; and thus 12 E. 2. Only the *Earls, Barons, and Commonalty* of the Counties are spoken of as granting an 18<sup>th</sup>. part of their Goods: but they would be very much deceiv'd who should think, that no others were at that Parliament; for the same Record shews, that the *Clergy* granted a 10<sup>th</sup>. and the *Cities and Boroughs* a 12<sup>th</sup>.

11. 'Tis very probable that at that time, the *Cities and Boroughs* had the Writs directed to them in particular, to be return'd by their *Headborough*, or other Officer, or else by the Community there.

Thus in the 14<sup>th</sup>. of King *John* Rot. Claus.  
14. Jo. m. 8. d. a Summons to the Army is sent to the *Headborough and Honest Men* of *Canterbury*; so to *Dover, Rochester, Gildford*, and a great many other Places.

Rot. Pat. 15.  
Jo. m. 3. n. 8.

And the very next Year particular Writs are sent to the *Honest Men of Canterbury*, the *Mayor and Barons of London*, the *Mayor and Honest Men of Winchester*, &c. and so to all the *Boroughs* and *Demefns* of the *Crown*; not only referring them to the *Justice* or *Custos* of the *Realm*, but desiring an *Aid* of them which: *Mr. M.* must agree to have been desired in as true a *Parliamentary Meeting*, as those which he cites of the time of *H.3.* in relation to *Ireland*.

This I hope may not be thought an unprofitable digression from the supposed *Ordinance 17 E. 1.* but may sufficiently evince, by what *Authority* it must have been made, if there were any such of that time; and that the *King* and his *Counsel* pretended not to settle the *State* of a *Dominion* annex'd to the *Crown* of *England*, without consent of the *States*.

But



But tho' the *King's Counsel* did not then act in *Parliament matters*, otherwise than *Parliamentarily*; yet 'tis certain that they did exercise an *Ordinary Jurisdiction* in relation to *Ireland*, as well as to *England*, either as *Committees* or *Tryers* of *Petitions*, appointed by the *Lords* or otherwise; tho' the bringing a Cause from the *Lords* in *Ireland* to the *House of Lords* here, is one of the circumstances in the present juncture of *Affairs*, which seems to require *Mr. M's* learned *Disquisition*.

In the Bundle of *Petitions* to the *Parliament*, in the time of *E.*  
 1. there are some (a) endorsed as  
 brought before the *King*, some  
 before *all the Council*; and as the  
 Method of following times explains this Matter, there had been appointed *Receivers* and *Tryers* of *Petitions* concerning *Ireland*; for several are receiv'd from thence, and authoritatively Answered.

Bundela Pet.  
 Parl. de temp.  
 E. 1.  
 (a) Coram to-  
 to consilio.

There's one from *Jeffery de Geymul*, who complains of the *Barons* of the *Exchequer* in *Ireland*, for sending within his Jurisdiction, a Commission of enquiry, who Sold *Pollards*; to the prejudice, as he alledged, of the *Franchise*, which (a) *H. 2.* had granted to the Ancestors of his Wife, *Maud de Lacy*.

(a) Vid. Davis  
Reple Case del  
County Pal. f.

64. Cart. H. 2.

Hugoni de La-

cy Com. pro

serv. suo &

terram in Mi-

dea cum moi-

bus pertin'

per serv. 50.

millium sibi &

hær. suis re-

nend. de me

& hær. meis.

This Commission was manifestly founded upon the Record of the Statute made here, as is shewn above, enrolled in the *Exchequer* of *Ireland* by Order from hence: This the *Barons* there obey'd, and held that by Virtue of that, they might cause Commissions of Enquiry to be executed even in *Palatinates*: nor does it appear, that the *King's Council* in *Parliament* disallowed of their Proceedings; for nothing was done upon this *Petition*, any more than referring it to the next *Parliament*.

In the Case of one *Allen Fitzma-*  
*ren*, they Ordered a Writ from the  
*Chancellor of England*, to require  
the *Justice of Ireland* to examine,  
whether a Judgment about Title  
of Land had been given while a  
Man was absent, and under the  
*King's Protection*; requiring, that  
if any thing was done contrary to  
*Protection*, it should be amended in  
due manner.

And as the *Lords in Parliament*  
then exercis'd a Jurisdiction over  
*Ireland*; it appears that out of it  
the *High Admiral of England* had  
*Conulance*, of all *maritime Causes*,  
as well throughout *Ireland*, as  
*England*, from the time then be-  
yond the memory of Man,  
which must relate to the general  
*Prescription*, which is at this day  
as far since as the beginning of *R. I.*  
Son to *H. 2.*

Rot. de superi-  
oritate Maris  
26. E. 1. Les  
Rois du dit  
Royaume du  
temps dount  
il n'a memo-  
re du con-  
traire eussent  
este en paisible  
poss. de la So-  
veraign Seig-  
norie, de la  
meer Dengele-  
terre, & des Isles

estants en y cel & q. l'Admiral ad jurisd. avec la con-  
nuissance & justice & tous autres appartenants, &c.

That



That during the Reign of *E. 1. Irel.* was govern'd as a part of *England*, or appurtenant to it ; and that the Laws made here wanted no other Publication, than what was in obedience to the Great Seal of *England*, affixed to Writs and Charters, or Exemplifications of our Acts of Parliament, by Authority from hence, I think may be beyond dispute: which might excuse my not dwelling upon the unfortunate Reign of *E. 2.* and yet there are some evidences not to be neglected of *England's* being then possess'd of its

*Of Ireland's being bound by the Parliaments of England in the time of E. 2.*

ancient Authority over *Ireland*: and that, tho' at least from the 3d. of that King's Reign Mr. *M.* supposes, that they had a regular Legislature in *Ireland*.

*Prynn's*

*Animad. on*

*Lord Coke*

*f. 262. 10. E. 2.*

*Quod semel in*

*Anno teneatur*

*Parl.*

In the 10th. of that King, the English in *Ireland* petitioned him for a Constitution, that a Parliament should be holden there once a Year: Upon this and other things then desired, the King, under the Great Seal

Seal of *England*, commands the *Justice of Ireland* to Summon a *Parliament* there, to consider what was fit to be done, and to certify the result into *England* : upon which the *King* declared that he would, by the *advice* of his *Counsel*, ordain what should be fitting : but nothing more appears of that matter, which was the farthest step towards settling an *Annual Parliament* in *Ireland*.

In the 12<sup>th</sup>. of that *King* an Act Stat. of York  
of *Parliament* was made in *England*, 12 E. 2.  
with this Preamble, " Forasmuch  
" as divers People of the Realm  
" of *England*, and of the Land  
" of *Ireland*, have heretofore ma-  
" ny times suffered great Mischiefs,  
" Damage, and Disherifons, by  
" reason that in some Cases where  
" the Law failed, no Remedy was  
" ordained ; and also forasmuch as  
" some points of the Statutes here-  
" tofore made, had need of Ex-  
" position ; our Lord King Edward,  
" Son to King Edward, desiring  
" that full Right may be done to  
" his

“ *his People ; at his Parliament hol-*  
 “ *den at York, the third Week af-*  
 “ *ter the Feast of St. Michael, the*  
 “ *12th Year of his Reign by the*  
 “ *Assent of the Prelates, Earls,*  
 “ *Barons, and the Commonalty of*  
 “ *his Realm* there assembled, hath  
 “ made these *Acts and Statutes*  
 “ following; the which he wil-  
 “ leth to be observ’d in his said  
 “ *Realm, and Land.*

Though *Ireland* is in some sense  
 part of the *Realm of England*, yet  
 here ’tis distinguished as a *Land* in-  
 tended to be bound, tho it had no  
*Commonalty* of its own to represent  
 it in *Parliament* : and there is new  
*Remedy provided where the Law had*  
*failed*, as well as the explaining  
 what was Law before : that part at  
 least which creates a Forfeiture of  
*Wine and Victuals* sold by any Offi-  
 cer appointed to look after the  
 Assises of them, was absolutely  
 new.

Cap. 6.

This



This Statute was transmitted to Ireland, by the following Writ, under the *Great Seal of England*, and the Name of the Party who received it, is enter'd upon Record.

Rot. Sat. de temp. E.1.E.2. E.3. Statuta missa fuerunt in Hib. ut in brevi subseq. continetur, & liberata fuerunt Godf. filio Rog. una cum dict. brev. defend.

Rex Cancel. suo Hibern' Salutem. Quædam statuta per nos in Parl. nostro nuper apud Norwiche convocato, de consensu Prel. Com. & totius Communitatis, regni nostri ibidem existentium; ad Communitatem regni nostri terræ Hibern' etiam vobis sub sigillo nostro mittimus insignata. Mandantes quod Statuta in dicta Cancel. custodiri, ac in Rollis ejusdem Cancel. irrotulari, & sub sigillo nostro utimur in Hi-

*The King to his Chancell. of Ireland, Greeting, We send you under our Great Seal, certain Statutes made by us in our Parliament lately called together at York, with the Assent of the Prelates, Earls, Barons, and all the Commons of our Kingdom there assembled; for the Common Utility of our Kingdom, and Land of Ireland: Commanding you, that at those Statutes be kept in the Rolls of the said Chancery, to be enroll'd and*

This

berniâ in forma  
 patenti exemplifi-  
 cari, & ad singulas  
 placeas nostras in-  
 ter. præd. & singu-  
 los comitat. ejusd.  
 ter. mitti facias, &  
 brevia nostra sub  
 dicto sigillo minist.  
 nostris placearum  
 illar. & Vicecom.  
 dict. Com. quod  
 statuta illa coram  
 ipsis publicari &  
 ea in omnibus &  
 singulis suis artic.  
 quantum ad eor.  
 singulos pertinet,  
 firmiter faciant ob-  
 servari. Teste  
 R. apud Clarendon  
 10 die Sept.  
 An. quarto decimo.

and exemplified in  
 the Form of a  
 Patent under our  
 Seal which we use  
 in Ireland: and that  
 you cause it to be  
 sent to every one of  
 our Places in the said  
 Land, and every  
 County of the same.  
 And our Writs un-  
 der our said Seal,  
 commanding our Of-  
 ficers of those Places,  
 and Sheriffs of the  
 said Counties, to  
 cause those Statutes  
 to be published be-  
 fore them, and in all  
 and singular their  
 Articles which to e-  
 very one of them ap-  
 pertain, to be firmly  
 observ'd. Teste the  
 King at Clarendon  
 the 10th of Sept. in  
 the 14th of his  
 Reign.

In the same Roll there's another  
 Writ of the same Form, dated at

Not

Nottingham 20 Nov. sending to the Chancellor of *Ireland*, the Statute of *York*, and another made before at *Lincoln*.

These Entries explain the general Transmissions; and shew what was to be done by the *Justice of Ireland*, in order to the publication of Laws made in *Parliaments* here, and sent to him: but yet he had no need nor authority to call a *Parliament in Ireland*, for the publishing any Law made here, unless particularly required under the Great Seal of *England*.

Yet I cannot but admire the force of Mr. *M*'s Imagination, in framing an Argument, on that very Year that those Statutes were sent to *Ireland*, That the *Parliament of England* did not take upon them to have any jurisdiction in *Ireland*, because the King sent his Letters-Patents to the Lord Chief Justice of *Ireland*, commanding that the *Irish* Natives might enjoy the *Laws of England* concerning Life and Member; to which he had been moved

Pag. 130.  
Pag. 129.



*moved by his Parliament at Westminster: which is as much as to say, they used no Jurisdiction because they did.*

That after this time, that *King* and his *Parliament* exercised Jurisdiction over *Ireland*, appears by the *Ordinance* made for the State of *Ireland*, in a Parliament held on the *Octaves* of *St. Martin*, in the 17th of his Reign, and not of *E. 1.* for which I shall refer not only to what I before observed, which may give reasonable satisfaction that no such *Ordinance* could have been made in the 17th of *E. 1.* but to the Statute-Rolls, where this is entered among the Statutes of the time of *E. 2.* next above the Statutes of the time of *E. 3.* For maintaining the Jurisdiction of *England* that Statute of *Nottingham* ordains, “ That  
 “ no Pardon for Felony be granted  
 “ by the Justice of *Ireland*, nor  
 “ Seal’d with the King’s Seal there,  
 “ without special Command of the  
 “ King, under some one of his Seals  
 “ of *England*.

Rot. Stat.  
 temp. E. 1. E. 2.  
 E. 3. M. 30.

1. It being so manifest from undoubted Records, that the *Parliaments of England*, to the 17th. of E. 2. exercised an Authority in making *Laws* to bind *Ireland*, and that there was a plain and known Method for publishing those *Laws* in *Ireland* by virtue of the Great Seal of *England*, I hope it will be allowed, that the Authority of Sir *Richard Bolton's* Marginal Note in an Edition of the *Irish Statutes*, is not enough to induce Men to believe, that in the 13th. of E. 2. the Statute of *Merton*, 20th. H. 3. and some other Statutes made in *England*, were confirmed in *Ireland*, as being of no force there till then: And that no other Statutes made in *England* were of force in *Ireland*, till confirm'd there. Can any Man think that no part of the Statute of *Merton* was received for Law in *Ireland* till the 13th. of E. 2. particularly, will even Mr. M. believe, that notwithstanding the Record 21. H. 3. of Transmission of so much at least of the Statute of *Merton* as relates to the *Limitation of Writs*, yet till the 13th. of E. 2. the descent in a

L                      Writ

Answer to Sir  
Richard Bol-  
ton's Marginal  
Note.

P. 63. 64.

Vid. Sup.

Stat. *Merton*  
c. 7. De Nar-  
ratione in bre-  
vi de recto ab  
anteceffore a  
tempore *Hen.*  
*Regis senioris.*

*Vid. Sup.*

Writ of Right was to be lay'd from an Ancestor of the time of *H. 1.* which is 200 Years within One? Or does he think that the *Justice of Ireland*, for the time being, would not have been turn'd out, if not impeach'd, had he not caus'd the *Statutes of West. 1.* and *2.* and the *Statutes of Gloucester*, to have been *Proclaimed* and *Observed* in *Ireland*, after they had been deliver'd to his Clerk in the Parliament at *Winchester*? and yet, if there be any thing in Mr. *M's* Quotation from Sir *Richard Bolton*, these were not received for *Laws* in *Ireland* till *13. E. 2.*

But since 'tis manifest that those, and the other Statutes afterwards sent over in the time of *E. 1.* and *E. 2.* must needs have been put in Execution there; if there were any such Act of *Parliament 13. E. 2.* as Mr. *M.* takes for granted, upon no Authority in comparison with the Records which I have cited; as to so much of any Acts of *Parliament* made here, as was not transmitted in the form above shewn, the Enacting them in *Ireland* might be the first *Publica-*  
*tion*



tion there : But as to what was contained in the *Patent* or *Charter* sent thither, it could be no more than a *Declaratory Law*, or rather *Republication*.

Sometimes there might have been a special form of *Transmission*, which as one means of publishing the *Laws*, might require their *Parliament* to meet to hear *Laws* read to them, which would bind them whether they consented or no : or by *Writ* from hence, a *Law* or *Charter* pass'd there might be so republished. Thus 'twas beyond Contradiction 12. H.

3. when a *Charter* of King *John's*, Sworn to by the *Irish*, was either sent back, or republished after it had lain there.

Mr. M. p. 52.  
and 53.  
Rot. Claus. 12.  
H. 3. De legibus & cons.  
observandis in  
Hib.

Rex dilecto & fideli suò Ric. de Burgo Justic. suo Manda- mus vobis firmiter, præcipientes quate- nus certo die & loco faciatis venire co- ram vobis Arch. Ep. Ab. Pr. Com. & Bar. Mil. & li- bere tenentes, & Bal-	The King to his Be- loved and Faithful Subject Richard de Burgh, his Justice of Ireland, we command you, firmly requiring, that at a certain day and place, you cause to come before you the Arch-Bishops, Bishops, Abbots, Priors, Earls, & Barons, Knights, &
---	--

livos singulor. Comitatus. & coram eis publice legi faciatis cartam Dni. J. Regis Patris nri cui Sigillum sum appensum est quam fieri fecit & jurari à Magnatibus Hib. de legibus & consuetud. Anglicis observandis: & præcipiatis ex parte nostrâ quod leges, illas & consuetudines in carta præd. contentas de cætero firmiter teneant. Et hoc idem per singulos Comitatus Hib. clamari faciatis & teneri, Prohibentes firmiter ex parte nostrâ, & super forisfactur. nostram ne quis contra hoc Mandatum venire presumat.

*Freeholders, and the Bailiffs of every County: and before them cause publickly to be read the Charter of King John our Father, to which his Seal is affixed, which he caused to be made and sworn by the great Men of Ireland; concerning the observing in Ireland the Laws and Customs of England. And command them from us, that they, for the future, firmly keep and observe the Laws and Customs in the said Charter contained. And cause this same to be Proclaimed thro' every County of Ireland, firmly Prohibiting in our Name, and under our Forfeiture, that no person presume to the contrary of this our Command.*

All must agree that this Publication, in so formal a *Parliament*, and after

after that, in the several *Counties*; was not necessary to give Sanction to that Charter, for that it had before: And could be no more than a reminding them of their Duty, or a more solemn *Publication* of the *Law*. But that being a Law made here, was held sufficient to make it a Law to the *English* in *Ireland*, and that, being transmitted thither under the Great Seal of *England*, it became a Rule to the Judges there, even in matters happening before the transmission, appears by the following Precedents.

Rot. Claus.  
20. H. 3. m.  
13.

A Man having been redisseis'd after the Statute of *Merton*, 20. H. 3. which had made a Redisseisour lya- ble to Imprisonment. A Party, who had been so injured, applies to the King for Remedy, and as the Writ to the Justice of *Ireland* has it,

Ideo vobis mittimus  
sub sigillo nostro  
constitutionem nu-  
per factam coram  
nobis & Magnatibus  
nostris Angliæ, de  
prædicto casu & si-

Therefore we send  
you, under our Seal,  
the Constitution, late-  
ly made before us and  
our great Men of  
England, concerning  
that Case, and other  
L 3 Ar-



militer, de aliis articulis ad emendationem rni nri Mandantes quat. de consilio venererab. Pat. L. Dublin, Arch. constitutionem illam in Curiâ nostra Hib. legi & de cætero firmiter observari, faciatis, & secund. eandem præd. querenti plene justitiam exhiberi faciatis.

*Articles, for the Amendment of this our Kingdom, commanding, That with the Counsel of the venerable father L. Archbishop of Dublin, you cause that Constitution to be read in our Court of Ireland, and for the future to be firmly observed, and that you fully do justice to the Complainant according to the same.*

In the Sense, in which the Parliament 12. of H. 3. was to receive the Charter of King John, and the King's Court or Bench in Ireland was to receive the Statute of Merton, I will agree that *Parliaments* in Ireland may have received Laws in the time of E. 2. but there's no colour to believe that they then pretended to more, in relation to *Acts of Parliament*, sent over to them at large under the Great Seal of England.

The Reign of E. 3. I may divide into Three Periods, 1. Before, 2. At, 3. After the main and most express Charter, for a Parliament in Ireland, of any yet cited, or appearing.

*Of Ireland's being bound by Parliaments of England, in the Reign of E. 3.*

1. In the Statute Roll of the beginning of E. 3. there are several entries in Latin of this kind. "Mem. that those Statutes were sent into Ireland in the (a) form of a Patent, (a) In forma Patenti. "with a certain Writ here following. But the entry of the Writ is sometimes omitted, it being look'd on as matter of common form.

In the 2d. of that King, a Statute was made at Northampton, giving a command about Fairs, to all Sheriffs of England, and other Parts. In the 6th. a Statute was made, supplying the Defects of that Statute, and creating the Forfeiture of double the Value of what should be sold in any Fair; or Market, beyond the time limited for them in the Charters.

*Vid. Rastals Collect.ed. Anno 1572.*

*Et per ailours.*



(a) Rot. Stat.  
Mem. quod  
istud Stat. cum  
Stat. preceden-  
tibus temp.  
Regis E. 3.  
Post conque-  
stum missa  
sunt in Hiber.  
in formâ Pa-  
tenti cum bre-  
vi seq.

(b) Et quan-  
tum ad vos &  
populum no-  
strum illar.  
ter. attinet fir-  
miter teneri &  
observari fac.

(c) Stat. 11.  
E. 3. c. 2.

In the 6th. of that King, this last  
(a) Statute, and all other Statutes  
made in his Reign to that time, are  
sent, in the form of a Patent, to An-  
thony de Lucy, Justice of Ireland, re-  
quiring that those Statutes, and all  
the Articles therein contained, be  
Proclaimed in the King's Land of  
Ireland, as well within Liberties, as  
without; and that he should cause  
so much of them as concern'd the (b)  
Justice, and the People of that Land,  
to be firmly kept, and observed.

A Statute (c) 11. of E. 3. pro-  
vides, That, except the King and his  
Children, no Person, great nor  
small, within England, Ireland, and  
Wales, or so much of Scotland as was  
then under the King's power, should  
wear any Cloth, but what was made  
in England, Ireland, Wales, or such  
part of Scotland; upon pain of For-  
feiture of the Cloth, and being Pu-  
nish'd at the King's pleasure.

And whereas Mr. M. according  
to the use which he makes of publi-  
cations, in or by Parliaments in Ire-  
land, of Laws made in Parliaments  
of England, would infer, that no Sta-  
tutes



tutes made here against *Provisors*, could be of force in *Ireland* till the 32<sup>d</sup>. of *H. 6.* when 'twas Enacted there, That all those Laws made in *England*, as well as in *Ireland*, be had and kept in force; 'tis evident, that (a) (a) Rot. Parl. E. 3<sup>d</sup>'s Parliament and his Council 20. E. 3. Ut memini, parte transcripti circa idem tempus amissa. acting in *Parliament*, held, that there was no need of other publishing and enforcing those Laws, than was usual by virtue of the Great Seal of *England*.

The *Commons* (b) Petitioned, that (b) N. 33. the *Provisions* and *Ordinances* made in the Parl. 17. of that King, concerning *Provisions* and *Reservations* from the See of *Rome*, be affirmed by a *Statute* to endure for ever: And particularly, (c) that if any *Arch-Bishop*, or (c) N. 34. other *Spiritual Patron*, do not present within Four Months after *Voidance*, by a Man's accepting any *Benefice* from the See of *Rome*, the *Right of Patronage* should accrue to the King: And they pray, (d) that *Commissions* and *Writs* be sent to all ports (d) N. 37. of *England*, *Wales*, and *Ireland*, and other Places within every County, as there should be occasion, to Apprehend

Note, This was a disposing of Property.

hend all those who should carry any of the *Bulls, Process, or Instruments* then complained of.

(e) Resp.  
N. 39.

The Answer in *French* is thus, (e)  
 “ ’Tis accorded and assented by the  
 “ King, the Earls, Barons, Justices,  
 “ and other Sages of the Law, that  
 “ the Things above-written be done,  
 “ and in reasonable form, according  
 “ to the prayer of the Commons.

Upon which, there’s no doubt but either a *Writ* was sent to *Ireland*, with this Act of Parliament, in the form of a *Charter*, to warrant Commissions for that purpose in *Ireland*; or otherwise, Commissions might issue from hence, to apprehend such Offenders as should be found there.

Stat. Stap. 27.

E. 3. c. 1. & 3.

The Statute of the Staple, 27.  
 E. 3. taking notice of the Damages to the People of the *King’s Realm*, and of his Lands of *Wales* and *Ireland*, because the *Staples* had been held out of the said *Realm*, and *Lands*, appoints places for the *Staple* in *Ireland*, as well as in *England* and *Wales*; and creates a *Forfeiture* of the *Wool*, and other *Staple Commodities*, which any *English, Irish, or Welsh*, should carry



carry out of the said *Realm*, and *Lands*: with the like Penalty, if they should receive Gold or Silver for them, elsewhere than at the respective *Staples*. Note, The Wisdom of that Law.

At which *Staples* 'tis to be observed, that there were paid Duties and Customs, granted by *Parliament* in *England*.

Another *Statute*, of the same Year, 27. E. 3. c. 7. appoints, That all *Wines* in *England*, *Ireland*, and *Wales*, be Gauged, on pain of *Forfeiture*, and further Punishment at the *King's* pleasure.

And but Two Years before, the *Statute of Treasons*, which does not name *Ireland*, was made for a Law to the whole *Realm*, and for *Ireland* as part of it: But none of the *King's* Subjects in *Ireland* were within that Law, unless they were to be adjudged Subjects of the *Realm of England*. Rot. Stat. M. 15. For the Honour of God. and of Holy Church, and the Amendment of his Realm.  
And yer this *Statute* is ordered to be published and observed in *Ireland*, as well as *England*, in this manner.

(a) "To the Sheriff of *Kent*, (a) Rot. Stat. de temp. E. 1. E. 2. E. 3. M. 15. De Proclamacione Statuti.  
"greeting. We send you, under our  
"Seal, certain *Statutes*, made in our  
"Parliament assembled at *Westminster*,  
"on



“ on the Feast of *St. Hillary* last past,  
 “ by *us*, the *Prelates, Dukes, Earls,*  
 “ *Barons*, and others of the *Common-*  
 “ *alty of our Realm of England*, to the  
 “ said Parliament summoned: Com-  
 “ manding, that you cause the said  
 “ *Statutes* to be read in your full  
 “ *County*; and that they be *firmly*  
 “ *observed, and kept.* Teste the King  
 “ at *Westm.* the 6th. day of *May*.

(b) Confimi-  
 les literæ diri-  
 guntur Justic.  
 Hib. mutatis  
 mutandis sub  
 eâdem datâ.

P. 161.

(b) “ The like *Writs*, of the same  
 “ Date, are sent to the *Justice of Ire-*  
 “ *land*, what ought to be changed  
 “ being changed.

Rot. Pat. 17.  
 R. 2. p. 1. m.  
 34.

But if the *Parliaments* of *England*  
 had, or exercised any Jurisdiction or  
 Authority over *Ireland* hitherto; at  
 least, 'tis to be thought, that 'twas all  
 taken from 'em by a Charter of *E. 3.*  
 part of which he transcribes out of  
*Mr. Prynn*, but for his satisfaction,  
 I shall give him more of it from the  
 Record, now to be seen in the *Tow-*  
*er*, 'tis a Charter of *R. 2.* of an *Ordi-*  
*nance* for the State of *Ireland*, recit-  
 ing and confirming the Charter 31.  
*E. 3.* beginning thus:

*Quia*

Quia ex frequen-  
ti fide dignor insi-  
nuatione accepimus,  
quod terra nra Hi-  
bernix, ecclesiaq; Hi-  
bernica, ac clerus &  
populus ejusdem no-  
bis subditus; ob de-  
fectum boni regi-  
minis, ac per negli-  
gentiam & in curi-  
am Ministror regior  
ibin, tam major, quam  
minor, haftenus tur-  
bati fuerint multi-  
pliciter & gravati:  
Marchiaq; terræ  
ipsius juxta hostes  
positæ, per hostiles  
invasiones vastatæ,  
occisis Marchioni-  
bus, & deprædatis,  
& eorum habitatio-  
nibus enormiter con-  
crematis, cæterisq;  
coactis loca propria  
deserere, quibusdam  
videlicet ad hostes,  
cæteris ad loca ex-  
tranea fugientibus.  
Diversaq; partes  
dictar. Marchiar. ta-  
liter desolatæ & de-

*Because from the frequent Relations of Persons to be credited, we understand that our Land of Ireland, and the Irish Church, and the Clergy, and People subject to us, thro' defect of good Government, and by the negligence and carelesness of the King's Officers there, both great and small, has hitherto been manifoldly troubled and aggriev'd, and the Marches of that land plac'd against the Enemies wasted, the Marches being kill'd and despoil'd, & their Houses enormously burnt, and the rest being forc'd to forsake their habitations, some flying to the Enemies, and others to Foreign Parts. And divers parts of the said Marches so desolated and forsaken, - have been possess'd by those En-  
mies,*

*The suppos'd Magna Charta for Parliaments in Ireland.*

*Rot. Stat. or-  
dinatione pro  
Statu. Hibern.*



relictæ, per hostes  
eisdem occupatæ :  
nostræq; & ejusdem  
terræ negotia incon-  
gruè & inutiliter, le-  
ges & approbatæ  
consuetudines mi-  
nus debite observa-  
tæ, populo nro bonis  
& rebus suis con-  
tra justitiam, legem,  
& formam Statutor  
inde editor. diversi-  
mode spoliatur. paxq;  
nostra læsa & minime  
custodita. Ac pro-  
ditores, Latrones,  
& Malefactores, non  
sicut convenit casti-  
gati : Quorum ma-  
lorum aliorumq; oc-  
cassione, majora dam-  
na irreparabilia,  
evenire, quod absit,  
timentur, nisi præ-  
missis opportunis re-  
mediis occurrat. Nos  
desiderantes utili re-  
gimini & quieti eo-  
rund. terræ & populi  
providere quæ sequ-  
untur: propterea, de as-  
sensu consilii nostri, or-

mies, and the Affairs  
of us and that Land,  
are incongruously and  
unprofitably, and the  
Laws and approved  
Customs not duly ob-  
served; our People be-  
ing in divers manners  
spoild of their Goods  
and things, contrary  
to Justice, Law, and  
the form of Statutes  
in those cases provid-  
ed: And our Peace  
is broken, and not in  
the least kept. And  
Traytors, Robbers, &  
Malefactors not pu-  
nish'd as they ought :  
By occasion of which,  
and other Evils, grea-  
ter irreparable Da-  
mages, which, God  
forbid, are feared as  
likely to happen, unless  
the Premises meet  
with opportune Reme-  
dies : We desiring to  
provide for the conve-  
nient Government &  
Quiet of that Land,  
& People; therefore  
we by the consent of  
our



dinanda duximus, & firmiter observanda. In prim. viz. volumus & præcipimus, quod sancta Hibernica ecclesia, suas libertates, liber. & consuetudines illæsas habeat, & eis liberè gaudeat & utatur. Item volumus & præcipimus quod nostra, & ipsius terræ negotia & ardua, in consiliis, per peritos consiliarios nostros, ac prælatos & magnates & quosdam de discretioribus, & probatioribus hominibus de Partibus Vicinis, ubi ipsa consilia teneri contigerit, propter hoc evocandos. In Parliamentis vero per ipsos Consiliarios nros, ac Prelatos & Procures aliosq; de terra nostra proutmos, exigit, secundum justitiam, legem, consuetudinē, & rationem, tra-

our Council, have thought fit to provide these following Particulars to be ordain'd, and observ'd : In the first place, that the Holy Irish Church have its Liberties, & free Customs unhurt, and enjoy & use them freely. Also, we will and command, That the Affairs and Arduous Matters of us and that Land, in Councils by our Learned Counsellors, and Prelates, and great Men, and some of the more Discreet & Honest of the parts neighbouring upon the place, where those Counsels shall happen to be held, to be summoned for this purpose ; But in the Parliaments by those our Counsellours and Prelates, Peers, and others of our Land, as custom requires, be according to Justice

Etentur, deducantur, *stice, Law, Custom,*  
 & fideliter, timore *and Reason, brought,*  
 favore odio aut pre- *and faithfully, Fear,*  
 tio postpositis, discu- *Favour, Hatred or*  
 tiantur, & etiam *Price, being disre-*  
 terminentur. *garded, discussed, and*  
                                   *also determined.*

Then particular Provisions are made here, notwithstanding the Allowance of *Parliaments* there: Among which,

(a) per Justiciar & Concili-  
um nostrum  
Hiberniæ.

1. That Men guilty of Broakage, should be Punished by the *Justice* and *Council* of *Ireland*, and *fined*, and *amoved* from their Offices ; as should seem reasonable to the *Justice* and *Counsel*.

2. That no *Purveyance* be taken contrary to the form of (b) *Statutes* and *Articles*, made and published, for the profit of his People, in *Parliaments*, and other great *Councils*. But if there be any force in Mr. M's way of Arguing, the Statutes against *Purveyors* were not binding to *Ireland* till 18. H. 6. when 'tis Enacted, " By  
 " a Statute made in *Ireland*, that all  
 " the Statutes made in *England* against  
 " the Extortions and Oppressions of  
       " *Pur-*

(b) Statut. &  
artic. per nos in  
Parliamentis  
& aliis magnis  
consiliis ad u-  
tilitatem po-  
puli nri edi-  
tor. & factor.



*Purveyers* are to be holden and kept in all points, and put in Execution in this *Land of Ireland*.

3. It provides against Robberies, and for Hue-and-Crys, according to the *Statute of Winchester*.

4. That no Pardon be pass'd but in *Parliaments* or *Councils*, by the *assent* and *counsel* of the said *Parliaments*, and *Counsellors*. And that there be no general Pardon: but that the Offences be specified and expres-

\* Juxta tenorem cujusdam Statuti per nos & consilium nostrum Angliæ edit. & missi ad Hiberniam observand.

5. The Charter, taking Notice that *false intelligence* us'd to be sent from *Ireland* to *England*, forbids it under (b) *grievous Forfeiture*, declaring, that if, for the future, the *Prelates*, the *great Men*, *Commonalty*, or *any other*, should misinform the *King* and *his Council*, they should be duly Punished.

(b) Sub gravi foris facturâ Prelati, magnates communitates aut quivis alii.

6. Whereas they us'd to Exhibit against one another, several scandalous and vexatious Libels and Bills, it provides, that they being reduced

M

to



(c) Sub sigillo Cancellar. pro-tempore existentis ad Justic. Cancell. & Thef. nostris Hibern. transmittantur. to Writing, (c) be, under the Seal of the Chancellor for the time being, transmitted to the King's Justice, Chancellor, and Treasurer of Ireland, who are thereby impowered to do Justice: but this is by virtue of the great Seal of England.

(d) Vocatis ad se Cancell. & Thef. nris Hiberniæ cum quibusdam Prel. & Comitibus quos evocandos noverit. 7. It Impowers the (d) Justice, calling to him the Chancellor and Treasurer, with some Prelates and Earls, whom he shall know to be fit, or that they ought to be summoned, to determine the Differences between the English of Irish Extractions, and which were or should afterwards be of English.

(e) Ex certa causa sub sigil. Justic. & sibi associator. 8. It requires the Justice and his Associates, when there was any (e) special Cause, to certify to the King & his Council of England, the Names of all Persons guilty, and their Offences.

(a) P. 161. Since Mr. M. having, as he fancied, (a) clearly made it out, that (b) for Ireland to be bound by Acts of Parliament of England, is against several Charters of Liberties granted unto the Kingdom of Ireland, thinks he had no need to add any other Authority than  
(b) P. 150.  
P. 161.

than a piece of that Charter, of the substance of which I have given an Account, with all the distinguishing Expressions ; I might well enough close here, and leave it to himself to consider, whether when a *Parliament* is granted, or allowed, to the Land of *Ireland*, in the fullest terms that ever it was in any *King's* Reign, that can be shewn ; there was not at the same time a full exercise of the Power of the *Crown* and *Kingdom* of *England*, in making Laws, and requiring the Execution of others made in *England*, without any desire or expectation of a Ratification there ?

And whether even their *Parliaments* are not threatned, if they send false intelligence to *England* ?

For full proof that in this *Ordinance*, the Authority of the *Parliament* of *England* was retain'd and asserted, I must observe to Mr. M. that this Noble Charter to *Ireland*, is but according to the usual Methods of Publishing Acts of Parliament, put under the great Seal, and thereby made a *Patent* or Charter : but 'twas an Or-



(a) Vid. Rot. *dinance, (a) or Act, of Parliament, for*  
 Stat. temp. *the State of Ireland, as may be seen by*  
 E. 1. E. 2.  
 E. 3. m. 12. *the Statute Roll.*

3. After this Statute mentioning  
 Rot. Stat. *Parliaments in Ireland, the Parliament*  
 sup. m. 8.  
 Stat. 36. E. 1. *here exercised the same Authority in*  
*making Ordinances and Laws for Ire-*  
*land, and the King and his Council*  
*held Ireland to be bound by those*  
*Laws, as part of the Realm of Eng-*  
*land.*

A Statute made in the 36th of that  
 King provides, that no Lord of Eng-  
 land, nor any other Person of the  
 Realm, except the King and Queen,  
 take purveyance on pain of Life and  
 Member; and takes from Mayors and  
 Constables of Staples, all Jurisdiction  
 in Criminal Causes: but I do not find  
 any mention of Ireland, and yet that  
 both King and Council judged, that  
 the publishing them in Ireland would  
 avail as much as the publishing them  
 in England, appears by the Writ to the  
 Sheriff of Essex and Hertfordshire, re-  
 quiring him to publish the Statutes  
 and Ordinances then made by the  
 King, with the common assent of the  
 Prelates,

M. 7. De Sta-  
 tuto procla-  
 mando.



*Prelates, great Men, and Commonalty*, in his (a) full Parliament at *Westminster*; and to return the Writ, with an Account of the Execution of it to the King in his *Chancery*.

(a) In pleno Parl. nro apud Westm.

(b) This Writ is tested by the King.

(b) Per ipsum Regem & Consilium.

And in (c) the same manner commands are sent to the *Justice of Ireland*.

(c) Eodem modo mandatum est singulis vicecom.

But notwithstanding this Trans-  
mission to *Ireland* of Statutes made  
here, one of which is about *Purveyance*,  
which is at least the Second of  
this kind made to bind *Ireland*, Mr. M.  
may if he pleases, hold, that this was  
not Law in *Ireland*, till (d) 18. H. 6.

per Angl. Ep. Dunelm Edw. Pr. Walliæ & Com. Cestriæ Rob. de Harle Constab. Castri Dover & Custod. s port. & Justic. Hiberniæ.

But after all, I would intreat the  
favour of Mr. M. to inform me,  
whether, according to himself, such  
Acts of Parliament in *Ireland*, were  
needful to Confirm Laws made  
here; when, if he puts a right con-  
struction upon the Record above  
cited, \* 9 E. 1. and of the Record,  
† 50 E. 3. of a Writ from hence for  
the Expences of *the Men of Ireland*,

(d) P. 68. Of the fancy that the Irish had Representatives chosen in Ireland, and sent from thence to be Members of Parliament here.

\* P. 95.  
† P. 97.

|| P. 98.

who last came over to serve in Parliament in England; The Men of Ireland us'd to send their Representatives hither, to the making the Laws by which they were to be bound: till || "*this sending of Representatives out of Ireland to the Parliaments of England, was found in process of time to be very troublesome and inconvenient.*"

Vid. Rot. Parl.  
de temp. E.3.

\* Vid. Rot. Pat.  
5. R. 2. part  
2. m. 19. *Their*  
*Parliament re-*  
*quired to send*  
*Nuncios.*

P. 97.

But whatever Mr. M. may imagin in this matter, that sort of representation of Ireland in the Parliaments of England, was no more than they had in the time of H. 3. and have 'tis likely generally had to this day, of persons entrusted to solicit the Affairs of Ireland, upon their numerous Petitions to the King, and his Council in Parliament; for which Receivers and Triers used to be appointed, or other matters of concern to them. But whether they were chosen by their \* Parliaments, when they had them, or elsewhere, their Expences, as appears by the Record cited by Mr. M. were levied by Authority under the Great Seal of England.

But



But I will shew a Record of the time of *H. 3.* when I will agree, that they had (a) *Nuntii, Messengers*, deputed, as 'tis likely, from a Parliament in *Ireland*.

(a) Rot. claus.  
32 H.3.m.6.d.  
Rex Baronibus  
Hiberniæ.

*H. 3.* in his Writ, or Letter, to the Barons of *Ireland*, takes notice, that, by the (b) *advice of his People*, he had given a favourable answer to some of their requests, made known by persons deputed from them. But because those persons alledged, that their Instructions were to insist upon all the particulars of their Requests; the King sends a Precept to the *Justice of Ireland*, under the Great Seal of *England*, requiring him, as it seems, to summon a *Parliament*; for, he was carefully to open the matters before the *Barons of Ireland*, and to know what they would give for the Liberties they desired.

(b) De nostro  
rum consilio.  
(c) Nuntii ex  
parte vestrà.

Ut eisdem  
articulis vobis  
diligenter ex-  
positis, &c.

The *Justice* had no Authority to have those Liberties settled in a *Parliament* there, but was to signify their Answer to the *King*; upon which the *King* would do what should be fitting, without taking any Right from them.

Et nos præd.  
negotium ad  
nostrum & ve-  
strum hono-  
rem effectui  
mancipare cu-  
rabimus sine  
ex heredatione  
vestrà.



That this was to be done in *Parliament* here, and that the *Messengers* from *Ireland* were no Members of that *Council* of the *King's People* which sent the Answer, is beyond dispute ; nor is there colour to believe, that any of their *Deputies*, or *Representatives*, had in any *King's* *Reign* more to do here, than those of the time of *H. 3.* had.

P. 96.

But surely no Man but Mr. M. will conclude, that such Instances, or the mention of the *Consent*, or *Petition* of the Irish in some Particulars, manifestly shew, that the *King and Parliament* of England, would not enact *Laws* to bind Ireland, without the concurrence of the *Representatives* of that Kingdom.

P. 85, 98.

Since therefore I have proved to the contrary, from *H. 2's* first acquisition, till towards the latter end of *E. 3.* and Mr. M. declares, that he will consider the more antient *Precedents* of *English Statutes* which particularly name Ireland, and are therefore said to be of force in that Kingdom ; I might rest here, did not Mr.

M.

M. take notice of the Statute of the Staple, 2 H. 6. and the Resolution of the Judges upon it, 1 H. 7. in such a manner as makes it requisite to be set in a truer Light.

*Of the Statute of the Staple, 2 H. 6. and the Resolution of the Judges upon it.*

The Merchants of *Waterford*, pursuant to the Licence granted them by E. 3. and confirmed by E. 4. had carried Wool, contrary to the ordinary provision of the Statute 2 H. 6. which being seized by the Treasurer of *Calais* as forfeited, part to the King, and part to himself as discoverer; The Merchants by Bill in the *Exchequer* here, pray restitution. 'Tis to be observed, that the Act upon which the Wool was seized, tho it creates a forfeiture of the value of Wool, Butter, Cheese, and other staple Commodities, carried from *England, Ireland, and Wales*, to other parts than *Calais*, and gives the Informer a 4th of what shall be carried contrary to that Act, from any County of the *Realm*, makes no mention of *Ireland* as to the Informers share; and therefore his Interest

*Pais du Roi-alm.*

rest could bear no debate, unless Ireland had been included, and the *Counties of Ireland* were *Counties*, within the Realm of England.

P. 90.

Salve la Pre-  
rogative le  
Roy.

But Mr. M. says, the 2<sup>d</sup> Question was, *Whether the King could grant his Licence contrary to the Statute; and especially where the Statute gives half the Forfeiture to the Discoverer.* But he might have observed, that the Statute has an express *saving of the King's Prerogative*, which goes thro' the whole, and certainly related to the King's granting Licences to the contrary in some particular Cases: Notwithstanding which, 'twas the opinion of the Parliament the next year, that this saving was not sufficient: and therefore the King, at the *grievous complaint of the Commons*, impowers the Chancellor of England to give Licences for *Butter and Cheese*, at his discretion.

3 H. 6. c. 4.

P. 90.

As to the question, *Whether Ireland was bound by the Stat. 2 H. 6.* Mr. M. pretends to transcribe *verbatim*, what relates to it in the *Year-Book*, 2 R.3. The matter, as he observes, was brought



brought before all the Judges of England in the Exchequer Chamber ; but after [ *ibi* ] he omits the word [ *dicatur* ] it was said, not *per curiam*, but at the most only by some Judge or Judges ; and might have been only by one of the Counsel for the Merchants. Whoever then held that Ireland was not bound by that Act, might have spoken it in relation to the Informer, who could claim no share of any Forfeiture incur'd from Ireland, unless the Counties of Ireland, were taken to be Counties within the Realm of England : But even as to this matter they were soon convinced of their mistake, in thinking Ireland was not bound by that Statute.

Mr. M. might have learn'd from the Year-Book, 1 H. 7. that this was so far from the resolution of the Court 2 R. 3. that there was no Judgment, but the Bill fell upon the demise of that King ; which till the Statute 1 E. 6. was a discontinuance of all real, personal, and mix'd Actions commenced in any of his Maje-

P. 91.

1 H. 7.  
Note. Ireland  
not named,  
yet the Courts  
in Ireland cer-  
tainly included.

sty's

1 H. 7. f. 3.

Come bill. fait  
en temps le  
Roy que ore  
est.

P. 92, 93.

*sty's Courts, and other Courts of Record.* And therefore 1 H. 7. the Suit was begun again, as if commenced in that King's Reign; and then the question coming before all the Judges in the *Exchequer Chamber*, *Hussey* the Chief-Justice, delivering the Judgment of the Court, declared, with the assent of the rest of the Judges, that *Ireland* was bound by that *Act*, and I leave to Mr. M. to make it out, that this was *directly contrary to the Judges opinion* in the 2d of R. 3. or that they were all *positive, that within the Land of Ireland, the Authority of the Parliament of England will not affect them.*

If there had been any such opinion, 'twas not delivered as the Judgment of the Court; and however, the Resolution 1 H. 7. has settled the Point another way.

This Case is abridg'd, and the Resolution receiv'd for Law by *Brook*, a Learned Judg in the Reign of H. 8. without any query, which is usual where he doubted: his *tamen nota*, that *Ireland is a Kingdom by it self*, and has

Vid. Brook. tit.  
Parl. sec. 90.



has Parliaments of its own, implies no more than that this, tho objected 2 R. 3. was of no weight to alter that judgment ; and is as much as to say, a Kingdom may be distinct from the Crown of a Kingdom to which it is annexed, and have Parliaments at home ; and yet be govern'd by the *Statute Laws* of that other Kingdom as subordinate to it. And tho the naming that subordinate Kingdom in an Act of Parliament here, or the other-  
*P. 118. Is Ireland's being named in an English Act of Parliament, the least step towards the obtaining the consent of the people of Ireland?*  
 wise manifesting an intention to bind it, is *no step towards obtaining a Parliamentary consent in Ireland* ; yet 'tis towards the submission and acquiescence of the People to those Laws, by which they and their Forefathers had consented to be governed.

I may now leave it to Mr. M. to answer his own Questions, *Shall Ireland receive Charters of Liberties, and be no partakers of the freedoms therein contained? or do these words signify in England one thing, and in Ireland no such thing?*  
*P. 157.*

Nor need I much fear his terrible Expostulation, *Whether it be not against natural Equity and Reason, that a Kingdom regulated within it self,*  
*and*  
*P. 155.*



and having its own Parliaments, should be bound, without their consent, by the Parliament of another Kingdom? But I should hope that he will admit it to be against *natural Reason*, to go away with a Conclusion, without some colour of proving the Premises; and therefore before he had laid it home (a) to English hearts to consider, *Whether Proceedings only of thirty seven years standing, shall be urged against a Nation, to deprive them of the Rights and Liberties which they enjoyed for five hundred years before;* He would have done well to have proved, that any one *Century*, or much less number of years, for these five hundred years & more, *Ireland* was ever, according to the terms of his own Question, *regulated within it self;* or, that 'tis a *Kingdom* of more than (b) one hundred and sixty years standing.

(b) From 33 H.  
8. An. 1542.  
at soonest.

\* P. 105.

But it seems just \* *thirty seven years since*, and never before, the *Rights and Liberties* which they had quietly enjoyed till then, were invaded, and from that day to this have been constantly complained of. 'Tis not to be

ex-

expected, that a man who remembers so little of those many Acts of Parliament made in *Ireland*, which might have moderated his assurance in this matter, should keep in memory even his own concessions to the contrary; as where he grants, that the Parliaments of *England* did at P. 65, 66. least claim a superiority, before the 10th of H. 4. and 29 H. 6.

P. 68.

But then he says, *We have not one Object. single Instance of an English Act of Parliament, expressly claiming this right of binding us; but we have several Instances of Irish Acts of Parliament expressly denying this Subordination.*

*Ans.* 1. As to the express claiming an Authority to do what is done, by virtue of an Authority always suppos'd; that's so far from an *Argument* against it, that it shews 'twas never call'd in question.

2. No *Act of Parliament*, even in *Ireland*, can be shewn or pretended, denying the *Subordination*; not but that there might be some question of the general binding, for want of due pub-

P. 79.

publication, either under the Great Seal of *England*; or of otherwise knowing the Intention of the Parliament of *England*: This, not the Authority, was the *Ambiguity* mentioned in the Statute of *Ireland*, 8 E. 4. in relation to a Statute 6 R. 2. which, without naming *Ireland*, alters a Law that did name it.

P. 63, 64.

3. If there were such *Act* of Parliament in *Ireland*, 13 E. 2. as 'tis supposed that a certain Judg in *Ireland* had seen, and that we might rely upon his Judgment in the sense of it; receiving some Laws before that time made in *England*, and suspending the execution of others; what I have shewn above from undoubted Records, may be enough to shew, that this would not in the least weaken the Right of the Parliament of *England*, exercised before and after that time: And if there were another Statute, 10 H. 4. that no Laws should be of force, unless they were allow'd and published by a Parliament in *Ireland*: This, tho' 'tis a strain farther than 'tis likely any Parliament of *Ireland* ever yet went, would



would not necessarily infer any more, than that the Laws made in *England* should be thus published, to the end they might be more generally known; not but that the intention of the Parliament of *England*, made known under the great Seal of *England*, was as much to be obeyed as their own Record shews that 'twas 29. E. 1.

Vid. sup. Davis f. 21. b.

The Authorities above-cited having manifested the several Titles which the *Crown* and *Kingdom* of *England* have to the Land of *Ireland*; and that from the 18th. of H. 2. at the latest, downwards as far as Mr. M. makes any controversy, neither the *Irish Nation*, nor the *English* there, have been govern'd without the interposition of the *Parliament of England*; and that the *Parliament of Ireland* had all its Laws made here, or derived under Authority from hence; and that not from the *King's* alone, or the *Kings* and *their Privy Counsels*, but their *Parliament*; that the *Parliaments of Ireland* have had no Provision for their being hol-

An. 1172.

den within any certain time, nor ever had Authority given them to act as *independent on the Parliament of England*; I may well conclude, that the right of the *Parliament of England* to bind *Ireland* by Laws made here, without any *Members* chosen for *Ireland*, is so far from being departed from, that 'tis *strengthened and confirmed* by the *continual usage* of the *Parliaments of England*, and *submission* of the *Parliaments and People of Ireland*: to which 'twill be needless to add the consideration of the *inestimable Treasure* spent in several Ages, for maintaining the *English Interest* there; and the late freeing it from an *Universal Insurrection*, and *Usurpation*.

*His Politicks and seeming popular notions wrong, and mis-applied.*

4. Having us'd the proper means to convince Mr. M. by the true *argumentum ad hominem*, shewing that the chief Weapons which he uses turn strongly against himself; I need the less apprehend the natural force of his reasoning upon dry Notions.

The right says he, which *England* may pretend to for binding us P. 4.  
by their *Acts of Parliament*, can be  
founded only on the imaginary Title  
of *Conquest*, or *Purchase*, or on *Pre-*  
*cedents and Matters of Record*.

Wherein he admits, that *Prece-*  
*dents and Matters of Record*, may  
give a Right, which is neither by  
*Conquest* nor *Purchase*: and of this  
the Authors he refers to might  
satisfie him at large. I'll agree  
with him, that on consent depends P. 150, 151.  
the obligation of all humane Laws:  
insomuch that without it, by the u-  
nanimous Opinions of all Jurists no  
sanctions are of any force.

But do any of them lay that the  
consent is necessary to be exprest, and  
that immediate? if it were the  
Sons could not be bound by those  
Laws which their Fathers chose,  
in restriction of *natural liberty*; and P. 152.  
he might have observ'd, by his own Hooker l. 1. sec.  
Authors, and even in the Words 10.  
cited by himself, that approbation,  
not only Men give, who personally de-  
clare their assent, by Voice, Sign, or  
act; but also when others do it in  
N 2 their



*their names, by right originally at least derived from them, as in Parliaments, Councils, &c.*

He adds,

*To be commanded we do consent, when that Society whereof we are part, hath at any time before consented. Farther yet, whatever Freedoms the Progeny of the English and Britains now in Ireland claim with the natural Born Subjects of England, as being descended from them; 'tis certain, every Man here does not, as an English-man, claim to be a Member of Parliament, or to have a Voice in chusing one: But there are many without this Privilege, who have been concluded by the consent of their Forefathers, and their own; agreeing to stay within a Kingdom govern'd by such Laws, to which they owe Obedience and Submission, at least as long as they will receive the benefit of them, and the protection which they assure.*

*This is the case of those English-men, who chuse to live in Ireland, under the Protection of England; without which the Protestants there*

there could not have subsisted, in any Age since the *Reformation*: and if the *Irish Natives* are not conquer'd, or the Right of Conquest over them, ought not to be carryed beyond the reparation of the *Damages* sustained from them; or if a just conquest gets no power, but only over those who have actually assisted in that unjust force; and if the right of conquest extends little farther, than over the Lives of the Conquer'd, but their posterity can lose no benefit thereby: If an outrageous and Brutal Enemy, may not be restrain'd from doing farther mischief, by the taking from him that Power and Estate which would enable him to carry on his Designs; if the posterity may not suffer in the consequence of this, as the aggressor's property is become the Conqueror's; if the Children may not be restrain'd from revenging their Father's Quarrel; let the *English* in *Ireland* look to it, how to justify those Possessions which they enjoy, by the help of the Crown and Kingdom of *Eng-*

P. 24.

P. 20.

P. 21.

*land*: and if their Consciences are squeamish, let them renounce their Right to the Lands of the Natives; but let them not bring in to question the Right of *Engl.* to all Foreign Plantations: and let them never fear that equal Power here, to which a great part of the *English Nation* are resigned, without any other kind of *consent*, than the People of *Ireland* have given, to the Laws made in *England*, with intention to bind them, and be published there.

Vid. P. 143.  
The People of  
England ought  
to be fully re-  
pay'd.

Prerog.

As to his notion of *Purchase*; whenever *Ireland* will repay the value of the Purchase, that *inestimable* and *infinite* expence of *Men, Money, Victuals, and Arms*, which their own Parliaments own to have protected and supported them for several Ages; there's no great question but *England* would be willing to leave 'em to their own ways.

Whereas he will suppose, that the Authority, which the *Lords and Commons* of *England* have exercised from Age to Age, in relation



tion to *Ireland*, would imply that the Parliament of *England* have P. 166. claim'd a *coordinate Power with the King*; what is this but to argue, that in relation to *England* the *Parliament* is *coordinate*? however, as by *Parliament* he means only the *States* of the Kingdom; 'tis evident this insinuation proceeds from his not observing the *Gothick constitution*, for which he would be thought very zealous: but might have known, that the *States of the Kingdom*, or the *ordines regni*, are those who are entituled to meet the King in Person, or by *representation*, in his *Parliaments*; where the King is a distinct *Body Politick* by himself: and, having the *Supremacy*, is manifestly above the *ordines regni*.

But tho' the Head which Mr. M. raises, about the suppos'd injury to *Prerogative*, be only upon a pretended *coordinate Power* with the King, he carries it farther: and will have it, that for the *States of this Realm* to use an Authority, tho' P. 166, 157. subordinate to the King, to intro-

duce new Laws, or repeal old, establish'd in Ireland, is a violation of the Constitution of Ireland under Boyning's Act, and of the Prerogative of the Crown of England; which he supposes to have been highly advanced by that Statute speaking of the effect of which he says,

“ The King's Prerogative is advanced to a much higher pitch  
 “ than ever was challeng'd by the  
 “ King's in England, and the Parliament of Ireland stands almost  
 “ on the same bottom as the King  
 “ does in England: I say, almost  
 “ on the same bottom; for the Irish  
 “ Parliament have not only a Negative (as the King has in England) to whatever Laws the King  
 “ and his Privy Councils of both,  
 “ or either Kingdom, shall lay before them; but have also a liberty of proposing to the King  
 “ and his Privy Council here, such  
 “ Laws as the Parliament of Ireland think expedient to be pass'd:  
 “ which Laws being thus proposed to the King, and put into  
 “ form, and transmitted to the Parliament

“liament here of Ireland, accor-  
 “ding to Poyning’s *Act* must be  
 “pass’d or rejected in the very  
 “words, even to a little, as they  
 “are laid before our *Parliament* ;  
 “we cannot alter the least *Iota*.

In this Narrative of their *Con-*  
*stitution* under that Law, he has  
 omitted the mentioning what is  
 very material, that the *Kings* an-  
 swer to what they propole, is to  
 be transmitted *under the great seal*  
*of England*, and this is to be the  
*Licence and Authority* for the hol-  
 ding a *Parliament* in Ireland ; and  
 therefore their *Acts of Parliament*  
 since that settlement, mention their  
 being held by *Authority under the*  
*Great Seal of England*.

3. C. 4. P. M.  
 Vid. etiam Mr.  
 M. p. 160. of  
 the Stat. 10.  
 H. 7.

And there were two obvious  
 ends and effects of this Law, as  
 Mr. M. himself owns, 1. “*The pre-*  
 “*vention of any thing passing in the*  
 “*Parliament of Ireland surrepti-*  
 “*tiously, to the prejudice of the King*  
 “*or the English Interest of Ireland :*  
 to which I must add, *or of Eng-*  
*land*.

P. 160.



2. To take from the *Irish* there, all colour of pretence of holding *Parliaments* as an *independent Kingdom* by virtue of any Authority *within that Land*.

But how the King's *Prerogative in the Legislature* was advanced by this I do not understand: since long before, as well as notwithstanding this supposed *Constitution* of an *Independent Parliament*, held by *Authority from the Great Seal of England*; the King had, and has, the *Prerogative*, not only to dissolve the *Irish Parliaments* at his Pleasure; but never to call any: which this *Gentleman* ought to fear, least such a claim as he makes might occasion: and I would gladly know, what part of *their Constitution* provides for the *frequent holding of Parliaments in Ireland*: yet frequency of *Parliaments in England*, is an undoubted part of the *Fundamental Constitution* of the *English Monarchy*.

Farther, is it any *advance* to the *Prerogative in the Legislature*, that a Prince who has the full exercise of  
an

an *absolute Legislature at home*, is only possessed of a Provision against having any attempt made, to the lessening that his *settled and indubitable Prerogative*?

I must needs say this *Gentleman* has a way of arguing beyond my apprehension: for I cannot see the consequence, how the *Prerogative* should be advanced, if, as he will have it, the *Irish Parliament* is put almost on the same bottom, as that the *King* stands on in *England*: if it be so, I should think it a lessening of the *Prerogative*, to have an *Irish Parliament* almost coordinate with him: which *Mr. M.* is very fearful least an *English Parliament* should pretend to.

And I as little understand the reason he gives, why the *Parliament of Ireland* stands almost upon the same bottom with the *King*; for says he, they have not only a *Negative Vote* as the *King* has in *England*, but liberty to propose; yet the *Laws* must be pass'd or rejected without alteration: This I take to be Foreign to the bottom on which

*which, either the King or that Parliament, stands. If it be meant that they are, in a manner, as absolute in this negative and liberty of purposing, as the King is in England: since it relates only to Laws first desired from Ireland, either by the Privy Council, or Parliament there; this Constitution of their Parliament, is so far from giving them a negative to the Laws pass'd in England, with declared intention to bind them in Ireland, that the Authority of England is wove into the very Constitution; and the Parliaments of Ireland own that Authority by their very Sitting and Enacting.*

Mr. M. having represented that Constitution of their Parliaments, by which he thinks they *stand almost upon the same bottom as the King did here*, makes this strong assumption.

If therefore the Legislature of  
 “ *Ireland stand on this foot in re-*  
 “ *lation to the King and to the Par-*  
 “ *liament of Ireland, and the Parlia-*  
*ment*



ment of England do remove it from this bottom, and assume it to themselves, where the King's Prerogative is much narrower, and as it were reversed (for there the King has only a negative Vote) I humbly conceive 'tis an encroachment on the King's Prerogative.

But he might consider,

1. That as here by the Parliament he takes *Lords and Commons* without the *King*; he mistakes the Fact in relation to their exercise of Power: for they do not assume to themselves the Power of making any Law, but *with, and under the King*.

2. Neither do they, in the highest exercise of their Power, take from the *Irish* any thing allowed or directed by *Poyning's Law*, or any other Constitution.

3. They do but assert the *Chief Prerogative of the Crown of England*, by which, *due consent being had*, our Kings give Laws to this *Realm*, and all the *Domjnions* belonging to it.

4. The

4. The ancient course of the Proceedings of the Parliaments of *England*, and their making all manner of Provisions for the Government of *Ireland*, evince, that *Poyning's Law* was rather an Indulgence to the *English* there, directing a Method for their maintaining the face of a *Legislature* among themselves, than any restraint of Power before vested in the *Parliaments of England*. And after all, this Law was never, as I take it, confirm'd by a Parliament of *England*. I must not here omit the consequences which Mr. *M.* draws, from the *Parliament of England's* pretending Power to impose any one Law upon *Ireland*.

P. 170.

1. That 'twill naturally introduce the Taxing them without their consent.

P. 171.

2. That 'twill leave the People of *Ireland* in the greatest confusion imaginable: that they are not permitted to know, which is the *Supreme Authority* which they are bound to obey; whether the *Parliament of England*, or that of *Ireland*

land or both; and that the uncertainty is or may be made a pretence for disobedience.

3. That 'twill be *highly inconvenient* for England; may make the *Lords and People of Ireland think they are not well used, and may drive them into Discontent.* Pag. 172.

1. Not here to consider, how far the *Lordship of the Land of Ireland* may infer the Taxing it, if it should refuse to concur as it ought, to its own Preservation: since the Law of necessity is no farther to be used, or considered, than while the necessity is apparent; I may say, that this is no consequence to be apprehended, and that as the Right of Taxing, does not follow from the Right of Governing; and the Nature of the Government depends upon the first *Submission*, and that *Interpretation and Confirmation* of it, which both the *governing Nation*, and the *governed* have put upon it: I must infer, with deference to the *National Authority*, that the Power which *England* has from the time of *H. 2.* claimed and exercised over *Ireland,* *Of the Consequence in relation to Taxes.*



Pag. 88, 89.

Pag. 105.

*Ireland, does not naturally introduce the Taxing them without their Consent ; yet, if the Modern Precedents of English Acts of Parliament alledg'd against Mr. M's Notion, are Innovations, and only of Thirty seven Years standing, depriving them of the Rights and Liberties which they enjoyed for five hundred Years before, and which were invaded without their consent ; such an Invasion would naturally introduce the Taxing them without their Consent.*

But since *England* uses no Power which it has not generally used for these 500 Years, he should avoid putting it to the necessity, or temptation to go farther.

*Of the uncertainty what Authority to obey.*

2. As to the supposed uncertainty where the *Supream Authority* resides ; he might have found that pass'd dispute in their *own Statutes* ; and yet their Denyals could be of no weight, till they had absolutely renounced the *Protection of England* ; and indeed must be thought to have come in *surreptitiously*, without the due care of the *Governours*,

nours there, under the *Crown* of *England*; as well as without the notice of the Nation which has hitherto *protected* and *supported* them.

However, the Obedience which that Nation has from *H. 2d's Time*, pay'd to the Laws of *England*, after they had been duly published by Authority under the *Great Seal* of *England*, might have sufficiently taught them where the *real Legislature* is vested, and by them and their Forefathers acknowledged.

And since he admits that till a *Regular Legislature* was established in *Ireland* by the *Irish voluntary Submission* to, and acceptance of the *Laws and Government* of *England*, we must repute them to have submitted themselves to the *Statute Laws* made under *H. 2. King John*, and *H. 3. and their Predecessors*; If a Kingdom can have *no Supreme* within it self, and a Subordinate Parliament is no Parliament, as he would infer; he must thank himself for the Consequence, that therefore they have neither a Kingdom, nor

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a Parliament: and then by his own confession, they are as much to be govern'd by the Statutes now made in *England*, as their *Predecessors* were in the Times of King *John*, and *H. 3.*

*Of the supposed  
Inconvenience  
to England.*

3. As to the imagined Inconvenience to *England*, and almost threatened *Defection* from the Crown of the Kingdom, this *Gentleman's* Undertaking makes it evident, that the Authority ought the rather to be exerted, to help some Men's Understandings, least such a shew of Arguments, and popular Flourishes, should encourage them to act as if they were a compleat Kingdom within themselves, with a King at the Head of them, during whose *Absence*, or professing a Religion contrary to that which the generality of the People profess, they might assert the Right of a Free Kingd. *subject to no Man's Laws*, but what they had consented to immediately, or permitted to grow into a Custom.

Since this Gentleman thinks he has silenced all the *Patriots of Liberty*



erty and Property, by his warm Appeals to them, and wheadling Notions of the *inherent*, and unalienable Rights of Mankind; and, howevre that he, has engag'd the *Crown* of his side, by adorning it with a *Prerogative* to govern *Ireland* without any relation to the *publick* good of that *Kingdom*, the *rightful* Possession of which, carries *Ireland* as an Appendant to the *Imperial Crown*;

I must desire him to consider whether in this, as well as other Particulars before observed, the Charge of Inconsistency, will not fall upon him more justly than upon the Lord *Coke*.

A little to qualife this heat, upon the suppos'd Injury to *Prerogative*, or common Right, I shall recommend these Heads to his serious Consideration.

1. Whether he does not yield, that if there were a *Submission* and *Consent*, to such Laws for Government, as *England* should from time to time publish, to be obeyed in *Ireland*; this would be no injury

to the *Common Rights of Mankind* :

2. Whether his Tragical Exclamations, against those who have acted contrary to what he takes to be the Right of the *English Proprietors in Ireland*, are not founded upon the Supposition ; that those *Acts of Parliaments* there, which have been made of late Days, with express intention of binding *Ireland*, are *Innovations* ?

3. Whether it being evident, that the Laws made here, have for so many Ages been enforced and submitted to, as binding *Ireland* ; an *English-man* in *Ireland* has more reason to complain of a Law made here, than a *Wealthy Merchant Free of no Corporation*, or any *English-man* whose Profit obliges him to a continuance in Foreign Parts ?

4. Whether all the *English Treasure* which has been spent, and Lives lost for the Reduction of *Ireland*, were absolutely at the Disposal of the *Princes*, or directed by any of their Parliaments ?

5. Whether a Law Book digested

sted in the Time of *H. 2.* as 'tis suppos'd, by Publick Authority, does not shew, that in the Notion of that very Time, when Mr. *M.* supposes that the Right of the *Crown of England over Ireland*, was first acquired, there was, or might be *Treason against the Kingdom of England*, as well as against the King?

Vid. Glanvil  
de Seditone  
Regis vel Reg-  
ni inter crimi-  
na lesæ Maje-  
statis.

6. Whether the submitting to take the *English Laws* from the King, implied the taking them from him alone; unless he made Laws in *England*, without the Consent of the *States* of the Kingdom of *England*?

7. Whether if the English *modus tenendi Parliamenta*, being, as Mr. *M.* thinks he has proved, transmitted to *Ireland*, by *H. 2.* stiling himself *Conqueror of Ireland*; after that, a Parliament of *Ireland*, held in that form, should have Voted themselves *independant upon the Parliament of England*; would not every Member have been liable to an *Impeachment for Treason against the King and Kingdom of England*?

8. If



8. If by Municipal Laws, or the Provision of the Common Law of *England*, in Cases not particularly express'd, the Son may justly suffer in the Consequence of his Father's Forfeiture for Treason; may not the same Reason hold for a *dependent Nation*?

9. Whether *Jurists*, universally agreed to be well skill'd in the Law of Nations, and even such as hold the *People* or *Community* to be the common Subject of Power, do not maintain, that as well the Dominion or Power vested in the *People*, as that which was in the *Prince*, may be acquired by another *Prince*, or *State*?

10. Whether they do not hold, that such acquisition made in one Age, and continued, lays an obligation upon Posterity to submit to it?

11. Whether they do not generally hold, that *Protection* is a good foundation of Power; and that this confirms the *Submissions* of *Publick Societies* anciently made, to the Nature of that Government which

which they had subjected themselves to, and to the governing Families?

12. Whether the *Protection* which the stronger Kingdom has continued to give to a weaker, is not at least as forceable an Argument for *Obedience*, as that *protection* which any Nation does, or can receive from the Prince who is at the Head of it?

13. Whether our *Saviour's* Observation upon the *Roman penny*, and *St. Paul's* Epistle to the *Romans*, did not establish a general Rule of Subjection?

14. Whether the *Jews*, and other Nations subject to the *Roman Empire*, had not much more plausible pretences for casting off the *Roman Yoke*, than the *Irish* have for disowning the *English Legislature*?

15. Whether our *Victorious* and *Heroical Kings*, *E. 3.* and *H. 5.* thought it any diminution to the *Prerogative of the Crown of England*, for their *Parliaments* to be joyn'd with them, in giving Terms

Vid. Rot.  
Parl. temp.  
*E. 3. & H. 5.*

to those Parts of *France*, which were brought under the *Crown of England*, in Wars carried on at a National Expence?

16. Whether, notwithstanding his Concession, that every King of *England*, is *ipso facto* King of *Ireland*; the contrary does not follow from his Notion of *Prerogative*, of *Ireland*s being a compleat Kingdom regulated within *it self*; and the Supposition that Acts of Parliament in *England* cannot bind *Ireland*, till confirmed by Parliament there?

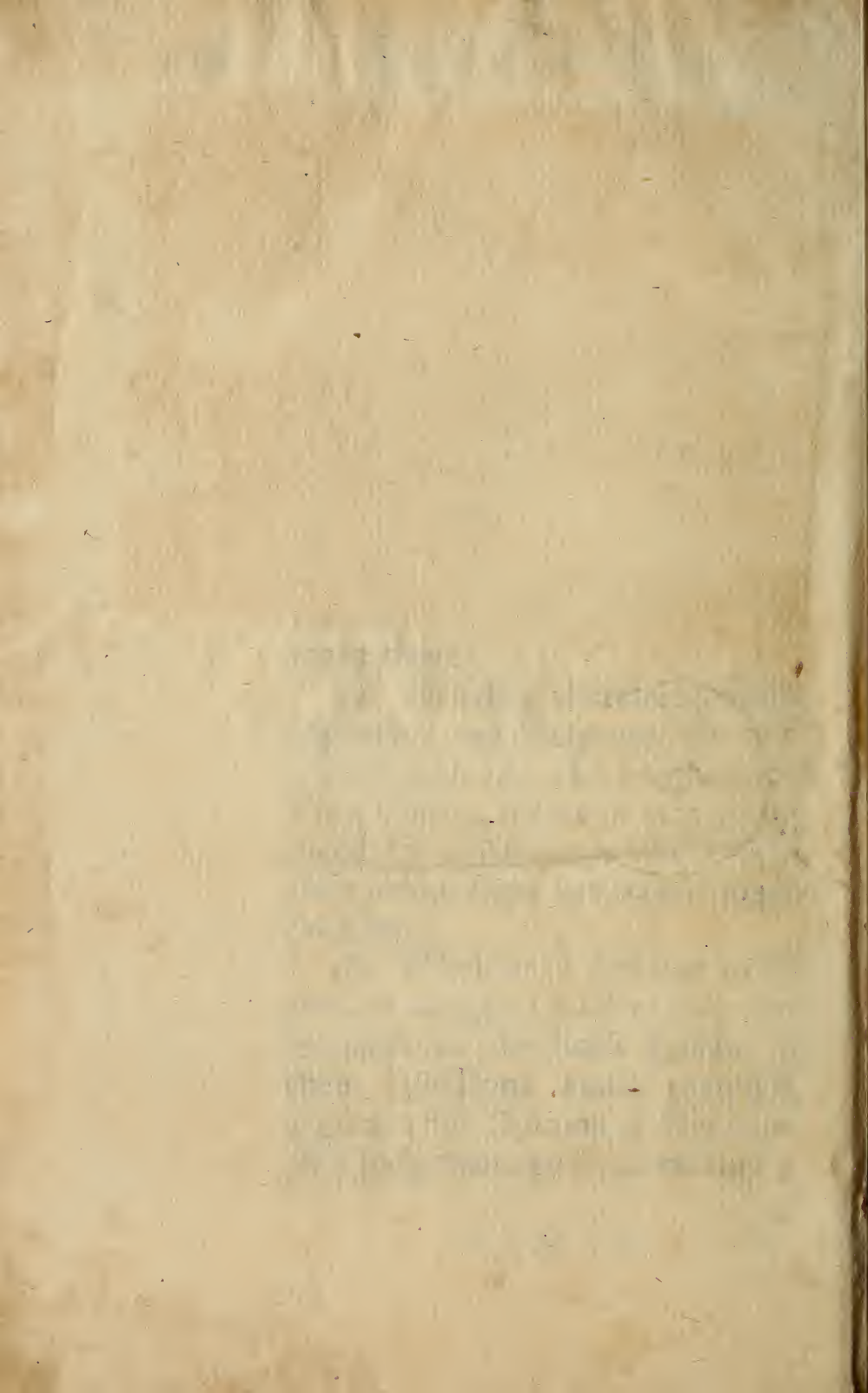
17. Whether therefore according to his way of arguing, the Subjects of *Ireland*, who fought under King *William*, before he was recognized by a Parliament in *Ireland*, then served their *Lawful and Rightful King*.

18. Whether to dedicate to His present *Majesty*, a Book of such consequences as the direct Answer to these Questions would manifest, argues a due Opinion of His *Majesty*'s Judgment and Penetration?



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